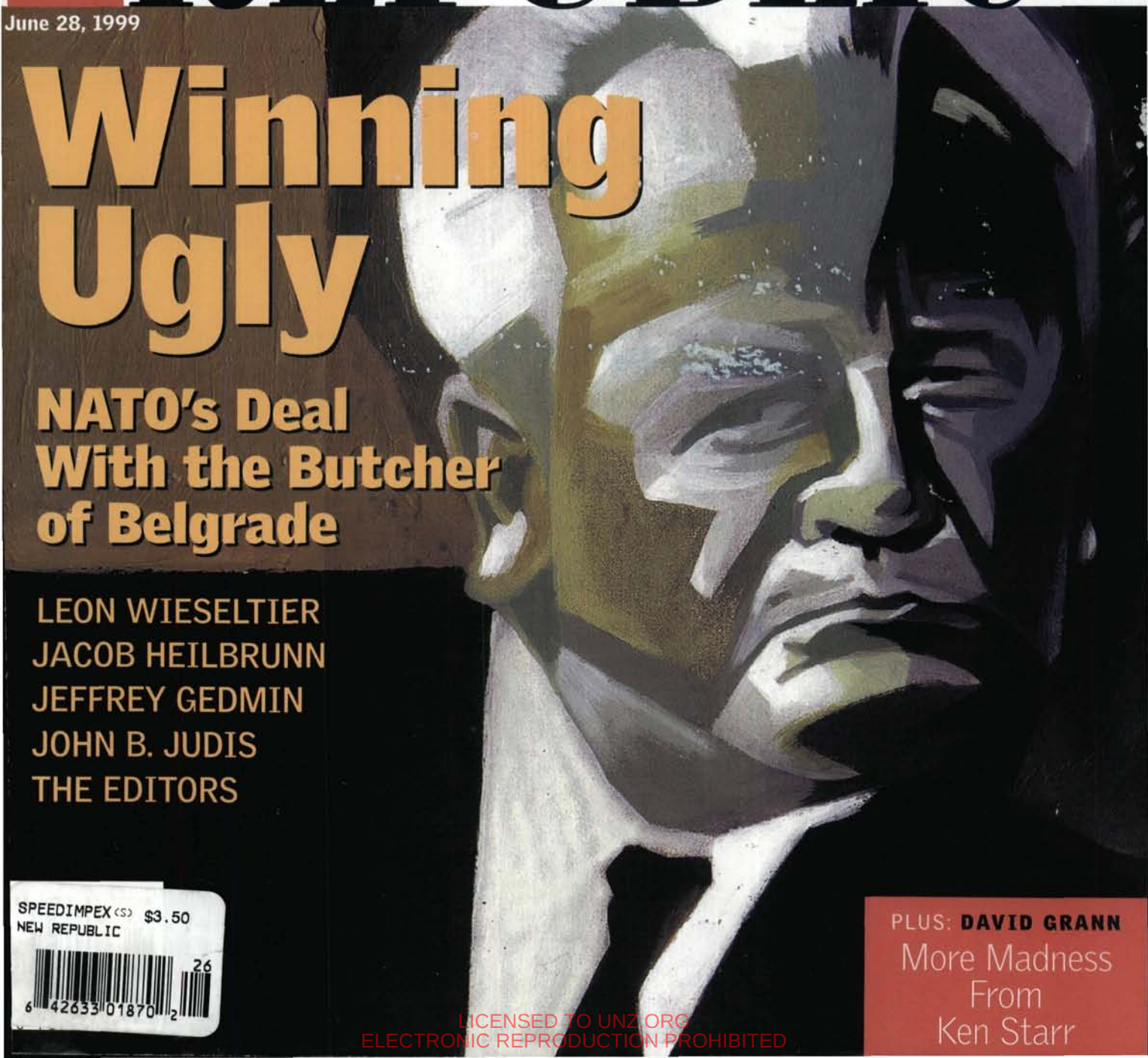
Ralph Ellison's Final Sermon JAMES WOOD

THE TERRIBLE AMBIGUITY OF THE SUPREME COURT
JEFFREY ROSEN

THE NEW REPUBLIC

June 28, 1999



Winning Ugly

NATO's Deal With the Butcher of Belgrade

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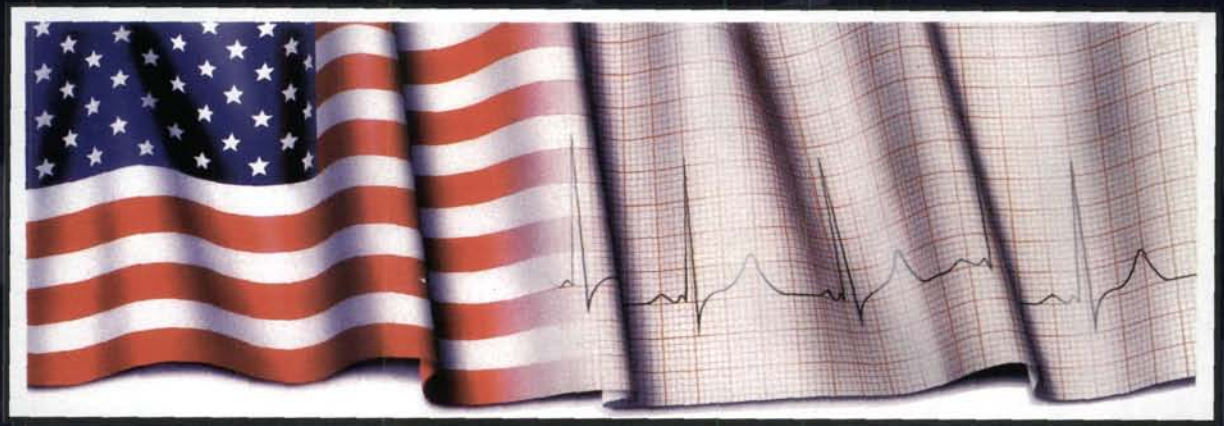

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THE NEW REPUBLIC

WASHINGTON, D.C.
JUNE 28, 1999
ISSUE 4,406

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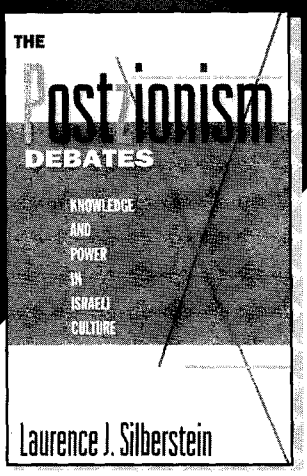

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Where We Stand

A commentary on public education and other critical issues

A STAR Story

By SANDRA FELDMAN, President
American Federation of Teachers

If you've waited in a supermarket checkout line recently, you may have seen the racy tabloid STAR, with its lurid headlines about various celebrities. If you looked inside the paper, however, you probably found that the stories did not amount to much. A waste of time, at best. But there's a much bigger STAR story that will never make the headlines in a supermarket tabloid—or most national newspapers, for that matter. In fact, most people will probably never even hear about it, which is too bad because it is real news, and it could have an enormous impact on something we all care about—educating our young people.

I'm talking about the massive STAR (Student/Teacher Achievement Ratio) research project in Tennessee. It has collected 14 years of data that prove conclusively that putting kids in small classes in their early years leads to higher achievement all the way through school—especially for poor, minority students (in this study, mainly African-American children).

A Great Experiment

STAR is not one of those studies that gives education research a bad name—the kind where someone gives 30 kids a test, asks their teacher about her philosophy of teaching, and comes to an impressive-sounding conclusion about why the kids succeeded (or failed). It was a carefully designed project involving 11,000 children in 42 school districts in Tennessee. Frederick Mosteller, an eminent Harvard professor of statistics, calls the study "one of the great experiments in education in U.S. history."

STAR researchers randomly assigned children who were entering kindergarten to classes of 15 students and classes of 25. (Even 25 probably sounds terrific to parents and teachers who are used to classes of 30 or 35 children.) The children stayed in these classes for four years—until the end of grade three—but researchers continued to chart and compare their progress. Last year, those same kindergarten kids graduated from high school.

The STAR findings clearly show that the benefits of small classes in the early years last all the way through school. Compared with students who spent their first four years in regular-size classes, students from the small classes are:

◆ More likely to graduate on schedule and less likely to drop out.

Small classes in primary grades pay big dividends throughout the school years.

◆ More likely to have been enrolled in honors classes and to graduate in the top 10 percent of their class.

◆ More likely to take SAT or ACT exams, indicating that they plan to go on to college. Poor, minority students who began in the small classes are far more likely to take these tests (40 percent, compared with only 31 percent for minority students who were in regular-size classes all along). Furthermore, the black-white gap between students taking these exams is reduced by 56 percent for black students who began school in small classes!

And this is on top of earlier achievement, which was equally impressive. At the end of third grade, children from the small classes were four months ahead of other children in the study in reading and math. This accelerated growth continued to increase over the years. In fact, by the end of eighth grade, the small-class children were over one year ahead of students who had been in standard-size classes in mathematics, reading, and science.

Small Classes Beat Vouchers

So, with results like these, why aren't we making sure all our kids get the benefit of small classes in the early grades? Why are we still talking about experimenting with vouchers to see if they can do the job? We already have a comparison between vouchers and small classes, and the difference is clear: Small classes raise achievement while vouchers don't. Princeton professor Cecelia Rouse's study of elementary school students in Milwaukee found that children in small classes made "substantially faster" progress in reading than voucher students. For the $25 million spent on vouchers to send a few kids to private school, Milwaukee could have lowered the class size for an additional 13,000 public school children.

What many teachers and parents have been saying for years is true: The STAR study in Tennessee proves that small classes in the early grades can help all our kids do better, and they should be provided in all our elementary schools. ▮

***Where We Stand* is published once every month in *The New Republic*. To comment, write to Sandra Feldman, AFT, 555 New Jersey Ave. N.W., Washington, DC 20001.** **© Sandra Feldman 1999.** **Visit our web site (http://www.aft.org).**

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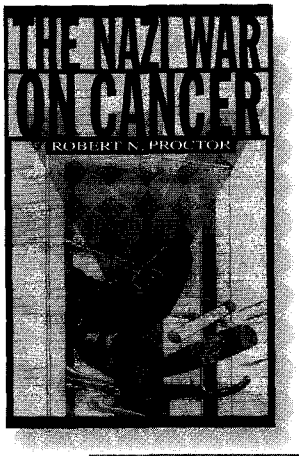

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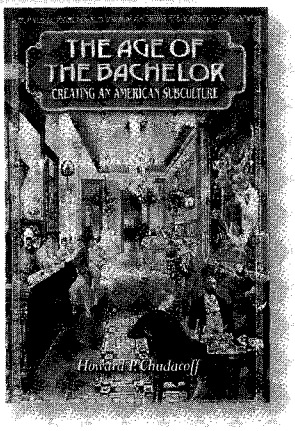

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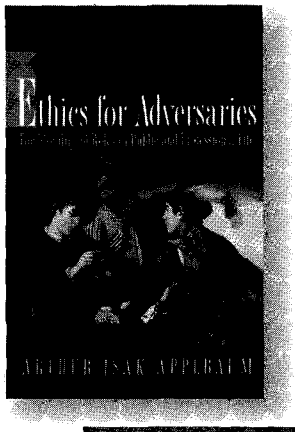

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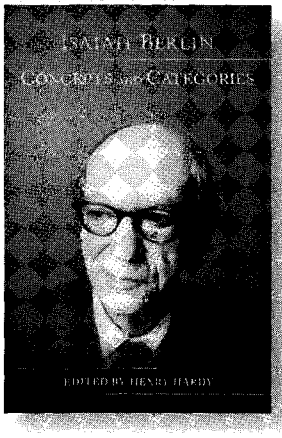

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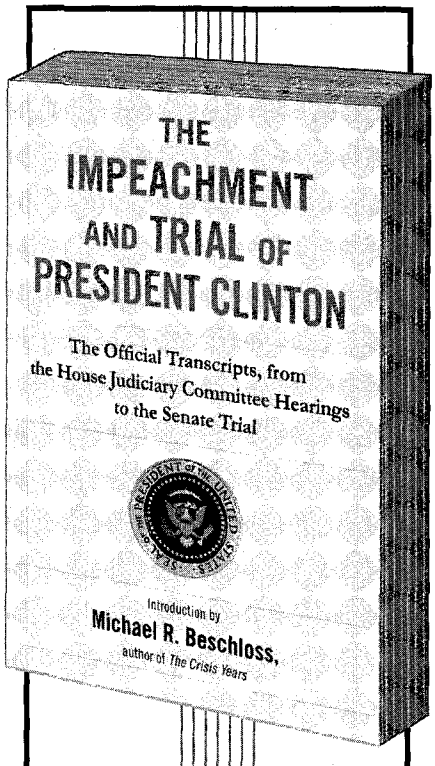

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McCain: Hero or vulgarian?

TO THE EDITORS:
What exactly is it that David Grann is trying to warn us about ("The Hero Myth," May 24)? Grann comes to the conclusion that John McCain is indeed a hero, despite the article's title. But then Grann spends the remainder of the article exposing what he calls McCain's secrets—his policies. McCain is a career Republican with a largely conservative record, but Grann appears concerned that, if the liberal media get behind McCain, the public will mistake the man for a liberal. Grann complains that "ideology no longer matters." Actually, the real danger is to McCain. After years of watching the media back Bill Clinton, the public has gotten used to the idea that *only* ideology matters. With too much press support, Americans might start wondering if McCain actually is the decent human being Grann concludes he is.

KEITH EMMER
New York, New York

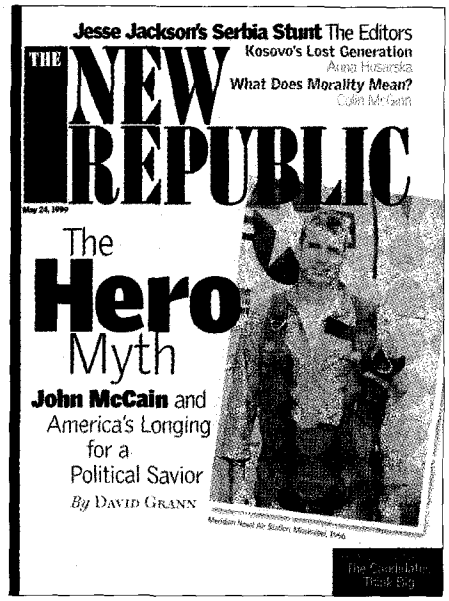
TO THE EDITORS:
Until now, your magazine has been for me an island of purity in a sea of baseness. But now I read your article on John McCain and am confronted with this quote from the senator: "I didn't know what the [expletive deleted] I was talking about."

Was it absolutely crucial that you include this sentence in your otherwise excellent article? Do you not feel that such language lowers your high standards? Does putting words in quotation marks remove all need of a sense of propriety? Would you read a paragraph with a sentence like this to your children? To your parents? I have always felt that resorting to foul language to make a point reflects intellectual laziness, something with which I have never hitherto associated your publication.

YISRAEL HARRIS
Baltimore, Maryland

Contractual obligations

TO THE EDITORS:
Colin McGinn's snarling review of T.M. Scanlon's *What We Owe to Each Other* goes beyond civilized standards of public discussion ("Reasons and Unreasons," May 24). First, he suggests that Scanlon has made his prose more difficult than necessary in order to mask how "thin and unconvincing" his theory is (an unsupported



accusation, and one completely preposterous to anyone who knows Scanlon at all). Second (and oddly in tension with this), he "assume[s]" that no one has dared to confront Scanlon with several "obvious objections" (McGinn's) which show Scanlon's view for the "terrible" theory it is. (If they had, Scanlon would surely have changed his mind!) McGinn goes on to tell us that he is puzzled about why people would want to hide these devastating objections from Scanlon and that he wonders whether it is because Scanlon is a nice guy, or perhaps because he is from Harvard. It never even occurs to McGinn that reasonable people might be unconvinced by his objections.

It would be improper for me to speculate on McGinn's motives for fouling an otherwise interesting review by including these mean-spirited and implausible bits of armchair psychology. Otherwise, I'd be tempted to take my cue from him and suggest that his hostility is the product of his own insecurities (stemming, no doubt from his knowledge that he is *not* a nice guy and that he is *not* from Harvard). But such speculations would be inappropriate, and an editor should have the good sense not to print them. We owe each other more courtesy than that.

DON LOEB
Burlington, Vermont

TO THE EDITORS:
Colin McGinn is "puzzled as to why the obvious objections" he makes against *What We Owe to Each Other* "were not urged on Scanlon over the years." He conjectures a number of reasons (Scanlon is a "nice guy," "from Harvard," and so on). But perhaps Scanlon considered objections

continued on page 54

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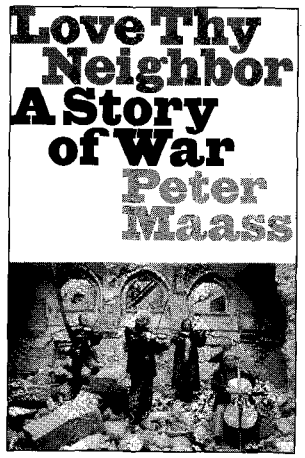

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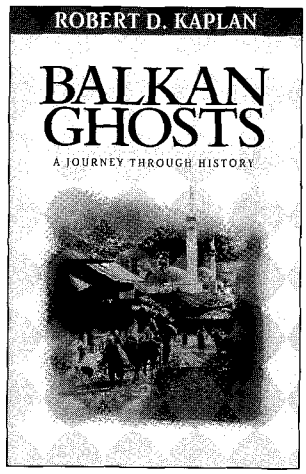

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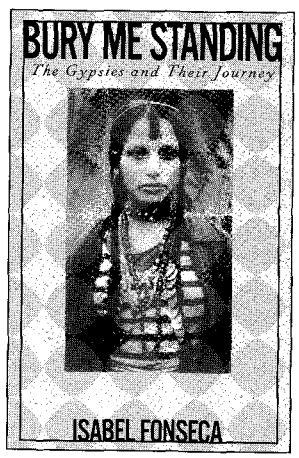

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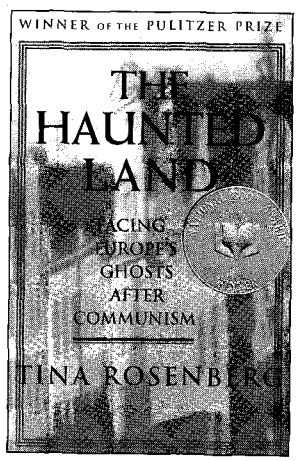

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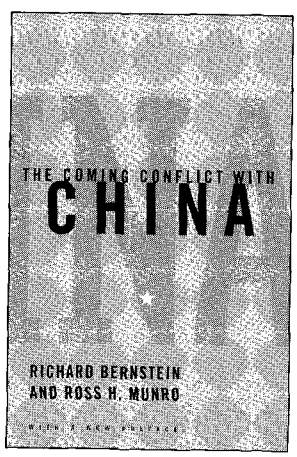

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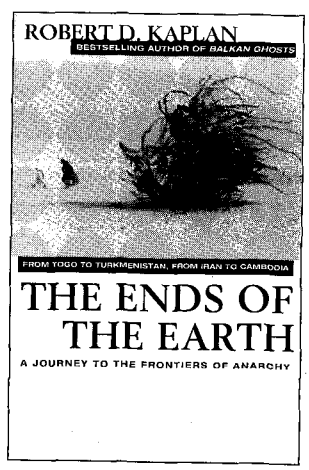
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FROM WASHINGTON

Citizen Soldiers

TO ANYONE WHO grew up during the cold war, there is something decidedly abstract about the public debate over our intervention in Kosovo. It has been waged primarily through public opinion polls. Outside the Beltway, the subject is rarely broached. What accounts for this difference? It is partly the absence of an overarching threat from the Soviet Union, partly the character of the war—the fact that it has been purely an air campaign without ground forces and, accordingly, no American casualties. But, beyond these factors, it is the detached relationship that Americans have to the military and, by extension, the national government.

Americans' relationship to our Armed Forces is disturbingly similar to that of the Victorian British to their armed forces and of the French to their Foreign Legion. Distant military exploits are a source of pride or disappointment, but they do not threaten our personal sense of well-being. The principal reason for this is the end to the draft in 1973 and the creation of the all-volunteer Army, which removed with one stroke the identification that many Americans—whether men or women, draft age or not—felt with the country's Armed Forces. But the roots of this detachment go further back to the earliest debates between internationalists and isolationists over the cold war.

In 1948, the Truman administration proposed a bold program designed to halt Soviet expansion in Europe and rebuild Western Europe's war-torn economies. The administration's program included the Marshall Plan, military aid to Greece, and universal military training for 18-year-old men. The administration wanted universal military training to lend credibility to its threat of defending Western Europe from Soviet invasion. But it was also meant to enlarge the concept of citizenship. Universal military training, Secretary of War Henry Stimson explained, "would let people know Americans took the duties of citizenship in the family of nations seriously enough to stand a year of training." It was a democratic solution to the new global responsibilities America had incurred. Instead of limiting citizen involvement in foreign policy, as Britain, France, and other former world powers had done, the United States would broaden it.

The main opposition to this plan, sociologist Lynn Eden explained in a 1984 essay called "The Making of United States Military Policy in 1948," came from isolationist Republicans who rejected committing the United States to the defense of Western Europe from a ground invasion. Instead of spending money on ground troops, they wanted to fund a larger Air Force that could defend the American homeland against the Soviet Union. But they also rejected universal military training, in the words of Senate Majority Leader Robert Taft, as being "contrary of the whole concept of American liberty." "It is hard to think of any more drastic limitation of personal freedom," Taft declared, "than to permit the state to take boys from their homes, their education, or their chosen occupations and subject them for a year to the arbitrary direction of some military officer and indoctrination courses prepared by some ideological bureau in the War Department." Like nineteenth-century Americans, Taft believed that the basis for citizenship lay in freedom from government obligation.

With Republicans in control of Congress, the Truman administration and its few allies were forced to strike a bargain. In exchange for Republican support for the Marshall Plan, they dropped the plan for universal military training and allowed Taft to transfer the funds intended for it to the Air Force. Instead of universal military training, Congress passed a two-year extension of the Selective Service System, or the draft, which selected qualified 18- to 26-year-old men for induction into the Army. The Selective Service System was a purely military program intended to fill temporary, annual manpower needs.

Nevertheless, the repeated extension of the draft had a similar effect to universal military training. It involved Americans directly in the conduct of foreign policy and contributed to the intense public debate over America's interventions in Korea and Vietnam. This experience should have affirmed America's commitment to a broader idea of citizenship, but, for some policymakers, the way the draft intensified opposition to the Vietnam War lent support to the concept of a volunteer military that would rely on high technology and astute balance-of-power diplomacy. In practice, such a military would function in the same manner as the imperial armed forces of Britain and France in the nineteenth century. It would achieve America's foreign policy objectives without directly involving the general public.

The draft was abolished in 1973 for a variety of reasons, including the dwindling demand for recruits as Vietnam wound down and the rising political and military costs of imposing it upon an increasingly rebellious youth population. But the effect of the decision was to create America's version of the French Foreign Legion. The draft's abolition threatened democracy by fostering a mismatch between our global responsibilities, which required an active citizenry, and a conception of national citizenship more suited to pre-Civil War America than today.

One way to remove this mismatch, of course, would be to revive the draft. But, while preferable to our current state of affairs, it would barely ripple the annual pool of 18-year-old men—and women. A better alternative, which hearkens back to universal military training, is the national service program developed in the 1980s by Northwestern University sociologist Charles Moskos. It would require any high school graduate who seeks a federal student loan to perform either military or civilian service. It would not link Americans to foreign policy as dramatically as the cold war draft did, but, by making military service an option, it would strengthen the average American family's connection to the military, while creating a link between citizenship and national obligation. It would also provide a common experience for Americans of different classes, races, and nationalities.

In 1989, Senators Sam Nunn and Barbara Mikulski introduced a bill modeled on Moskos's plan, and Clinton championed it during the 1992 election, but, like so many planks in his platform, it was thwarted by conservative Republicans. Newt Gingrich described national service as "coerced volunteerism." In 1993, Congress passed a small, purely civilian pilot program called Americorps, which enrolled 20,000 out of a pool of three million high school graduates. Americorps has been a minor success—in spite of continued Republican opposition to its very existence—but it is an inversion of Moskos's original plan, which was intended to attract an overwhelming majority of 18-year-olds and to affirm the universality of national obligation. Kosovo demonstrates once again the urgency of such a plan—not in order to fill the ranks of the military but in order to repair the frayed links among American citizens, their nation, and their nation's foreign policy.

JOHN B. JUDIS

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WASHINGTON SCENE

Bigfoot

POOR NITA LOWEY. That, at least, was the overwhelming sentiment in political circles last week when the six-term Westchester congresswoman acceded to political reality—in the form of Hillary Clinton's inevitable candidacy—and bowed out of the New York Senate race. *The Washington Post* and *The New York Times* both ran sympathetic, front-page accounts of Lowey's decision. TNR's old friend Mort Kondracke lamented on Fox News Channel, "There was no oxygen left for Nita Lowey to breathe."

Indeed, ever since January, when Lowey first indicated that she would abandon her Senate aspirations if Hillary Clinton were to announce she had similar aspirations of her own, the press and fellow politicos had been wringing their hands over Lowey's predicament—and making her out to be Clinton's first victim. Gary Tuchman of CNN cast the congresswoman as Clinton's gracious "understudy." Richard Cohen, in *The Washington Post,* held up Lowey as a plaintive "Lady in Waiting." The *New York Post*'s Meredith Berkman—after imagining a ladies' room encounter during which Lowey slams the first lady into a sink and growls, "Give it up, Hillary"—beseeched Clinton to fish or cut bait and "put noble Nita Lowey out of her misery." After Larry King tossed him an unusually pointed question about when Clinton would finally decide, New York Representative Charles Rangel, who first floated the Hillary-for-Senate idea, replied, "When Nita Lowey says that 'hey, if you're not going to run, I need time to run.'"

To be sure, not all of the sympathy for Lowey was entirely genuine. Conservatives were happy to shed a few crocodile tears over her plight if it would help drive home the point that Hillary Clinton is a ruthless politician who'll step on anybody to achieve her goals. Kentucky Senator Mitch McConnell, for instance, appearing with Lowey on CNN's "Crossfire" to discuss a potential Clinton candidacy, offered "my condolences to Nita, getting pushed aside by someone from Arkansas [and] ... having to wait in the wings like this for the first lady to make up her mind."

McConnell was being insincere, but he was also right: there was something galling about the way Clinton bigfooted Lowey out of the race—and not just because the first lady is from Arkansas (well, Illinois, actually; New York isn't even her first adopted home state). Unlike Hillary Clinton, Lowey had built her political career on her own merits. As Cohen observed in *The Washington Post,* "No one has ever heard of her husband." But, in the rush to paint Lowey as Clinton's victim, the press and the politicos seemed to forget one thing: at the same time that the first lady was squashing Lowey, she was also building her up, transforming Lowey from a relatively unknown congresswoman into a bona fide political star. Consider that when the *New York Post* surveyed the potential Democratic field for the Senate race in December, Lowey polled a microscopic 3.5 percent. By April, after several months of basking in Clinton's shadow, Lowey was polling 29 percent in a head-to-head race with Rudy Giuliani, according to a Marist Institute survey. Even more than name recognition, the role of understudy brought Lowey cash: in May, Hillary Clinton hosted a Manhattan fund-raiser for Lowey, where big names such as Alec Baldwin, Kim Basinger, and Kenneth Cole poured $1 million into the congresswoman's campaign coffers. The combination has made Lowey an up-and-comer: when she officially bowed out of the Senate race on June 3, deciding to seek a seventh term in the House instead, *The New York Times* and *Newsday* both speculated about a Lowey-for-governor campaign in 2002.

So, if you're searching for a real victim in Clinton's Senate drama, skip Lowey and take a look at a guy named John Calvelli. You've really never heard of *him.* Yet his situation truly illustrates the cascading downward impact of the first lady's run. The administrative assistant to New York Representative Eliot Engel, whose suburban district abuts Lowey's, Calvelli was one of several New York Democrats who were planning to run for Lowey's House seat—that is, until Clinton came along and Lowey decided not to give it up. Calvelli, who is 35, had been building toward his electoral moment for some time. A Bronx native whose parents emigrated from Italy, Calvelli began working for Engel in 1985, when Engel was still a state assemblyman and Calvelli was still attending Fordham Law School. After Engel was elected to Congress in 1988—Calvelli was the campaign's only staffer—Calvelli joined his boss in Washington. But Calvelli assiduously tended to his New York roots, commuting between Washington and Westchester, where his wife and infant son live, for the past eleven years.

Initially, Calvelli had planned to run for a seat in the New York state Senate. But when Guy Velella, the Republican incumbent whose seat he'd been targeting, unexpectedly decided to run for reelection, Calvelli turned his attention toward Lowey's House seat, which presumably would be open. In February, he formed a federal exploratory committee and prepared to shift the $140,000 he'd raised for a state Senate run toward his planned House race; he also hit up his donor base of 500 people for $10,000 more. As for those pesky rumors that Clinton was going to run for Senate and keep Lowey in the House, Calvelli shrugged them off as just that: rumors. "Who would have thought?" he says now.

Sitting in his cramped office in the Rayburn House Office Building, sucking on an Altoids mint, Calvelli tries to mask the understandable disappointment he must feel over this twist of fate. Of course, since he still nurses political ambitions, he has to put the best face on things. "Instead of looking at the parochial, the question of how this affects John Calvelli right now, look at the long term, at the benefits that something like this has to the party," he rationalizes. "And look at the benefits it'll have to a John Calvelli, if John Calvelli decides to run in the future.... Having good candidates represent us nationally and statewide is going to have a positive ripple effect down the line because more people will get involved in the process, more money will be raised, there'll be greater opportunities down the line."

Yet, even though Calvelli is loath to criticize the first lady, he does concede that she has upset the natural order of New York politics. "If you've ever played dominoes, it's really the same thing here—the domino effect," he says. "The impact of Hillary Clinton's decision not only affects the U.S. Senate but also affects who the county legislator in Westchester County's going to be. It goes all the way down the line."

Calvelli, a self-described optimist, isn't throwing in the towel just yet. Although incumbent New York state senators are notoriously difficult to defeat—not one lost in 1998—there's still talk that Calvelli might challenge Velella. And whatever elected office Calvelli eventually decides to seek, he's sure Hillary Clinton will be a help. "That's the type of person she is," he says. "I know that, if we call on her, she'll help us and support us." Considering how the first lady's Senate gambit has disrupted the plans of less illustrious Democratic pols, that's the least she could do.

JASON ZENGERLE

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Some were skeptical when Arizona voted to stop incarceration of drug users.

Here's what the experts are now saying:

SUPREME COURT OF ARIZONA

Drug Treatment and Education Fund Implementation Year Full Report
Fiscal Year 1997-1998

- Arizona taxpayers saved $2.6 million in one year
- 77.5% of drug possession probationers tested negative for drug use after the program

The court stated, "The Drug Medicalization, Prevention and Control Act of 1996" has allowed the judicial branch to build an effective probation model to treat and supervise substance abusing offenders . . . resulting in safer communities and more substance abusing probationers in recovery.

New York Times **Editorial, April 21, 1999**

ARIZONA SHOWS THE WAY ON DRUGS

Arizona is a politically conservative state. Its voters showed that they were tired of paying the costs of a bad idea. In requiring that drug offenders be treated before being freed of supervision, they may have made themselves safer. By treating drugs as a health problem, they have shown states like New York, which spends $700 million a year to imprison drug felons, a better way.

Talk of the Nation, **February 25, 1998**

Drug Czar, General Barry R. McCaffrey

"I don't think we're going to arrest our way out of this. We've got 1.7 million people behind bars right now."

President Clinton, Senator Lott, Speaker Hastert: Isn't it time to stop incarcerating nonviolent drug offenders and start treating them?

For "Drug War Facts" and "The Effective National Drug Control Strategy" visit http://www.csdp.org

Common Sense for Drug Policy Kevin B. Zeese, President, 703-354-5694, 703-354-5695 (fax), info@csdp.org

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Hard Bargaining

ON THURSDAY, JUNE 3, when it first appeared that Slobodan Milosevic was prepared to accept a peace deal for Kosovo, NATO leaders noted with pride that, rather than allowing the wily Serbian president to negotiate the terms, they had presented him with a take-it-or-leave-it proposition. "This is the best offer you're going to get," he was reportedly told by European Union envoy Martti Ahtisaari. But, just days later, it is clear that NATO's final offer was not so final at all; Milosevic has, in fact, managed to maneuver NATO into giving him a better one. Having never really adopted a policy based on getting rid of the alleged war criminal in Belgrade, the United States and its allies are now committed to a de facto policy of bargaining with him until that hoped-for moment when someone from within Serbia finally topples him. With that in mind, it is especially instructive to spell out how he so quickly managed to recover his balance and outfox the diplomats of the West—even from a position of weakness.

Characteristically, Milosevic's first move was to pull a fast one on his own people. When he hastily assembled the Yugoslav parliament to vote on the NATO-approved peace plan, the copy he presented to the parliament did not include the crucial footnote calling for NATO to be "at the core" of the peacekeeping force for Kosovo, which would also have "a unified chain of command" controlled by NATO.

Milosevic's next stratagem was to precipitate a delay in the implementation talks between his military commanders and NATO generals until representatives of the G-8 nations in Cologne, including Serbia's ever-helpful ally, Russia, could meet to hammer out a United Nations resolution sanctioning the deal. Then the Russians, in a move that must have been coordinated with Milosevic and designed to placate the Yugoslav military, insisted on language that significantly watered down the tough terms set forth in the plan to which Milosevic had "capitulated." The words "NATO at the core" appear nowhere in the U.N. resolution—a critical document that will function as a virtual constitution of the Kosovo protectorate over which the United Nations Security Council will preside for the indefinite future. The fact that the mission will be under U.N. auspices is potentially a huge break for Milosevic, as well. He's betting that Russia, China, and France, which have used their veto powers on the council to gradually beat down the aggressive U.S. and British policy against Saddam Hussein, will do the same for him in Kosovo.

So Milosevic has gotten the United States and its European partners to agree to a much-diluted NATO presence in Kosovo. And the truly brilliant part of it is that, because of his deft handling of that crucial footnote, he can semi-honestly say that his parliament had never formally agreed to anything else.

Meanwhile, the resolution drafted at Cologne still leaves ambiguous the critical question of Russia's role in the peacekeeping force, especially its relationship to NATO. U.S. officials insist that they expect the eventual structure to be similar to the one in Bosnia—where the Russian forces work in the American sector and report to a non-NATO U.S. military leader. But the Clinton administration has offered no public explanation for why it's so confident about this. The Russians, after all, keep saying they want to operate in their own sector in the north of Kosovo and not report to anyone. Whether or not the Russians intend to exploit all the mischievous possibilities of this continuing ambiguity, the language in the draft U.N. resolution will certainly make it easier for the Serbs and Russians to haggle over every point of contention as the Kosovo mission struggles forward.

True, what really matters is implementation—and, as of this writing, NATO's military representatives, led by British Lieutenant General Sir Michael Jackson, appear committed to making sure that NATO rules on the ground in Kosovo. But, even on this front, there has been at least one disturbing concession: NATO negotiators permitted the Serbs an additional four days to withdraw, over and above the seven days that the original deal suggested. That gives the Serbs four more days to cover up evidence of their atrocities, as they have been doing during the past few days. American aerial reconnaissance photographs have already discovered one mass grave that the Serbs have dug up, presumably to transport the bodies somewhere human rights investigators can't find them. Who knows? The way Milosevic has been dragging out the bargaining, all the evidence might be gone by the time "KFOR" finally enters the blasted province. ■

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NOTEBOOK

THE ACCIDENTAL DIPLOMAT: The ink was barely dry on the apparent peace deal between NATO and the Serbs when Jesse Jackson started making noises about paying another visit to Belgrade to see his old friend Slobodan Milosevic. Jackson's purported travel purpose this time around is to negotiate the release of three aid workers—two Australians and a Yugoslav national—who were recently convicted by the Belgrade regime on espionage charges. But, at a press conference to announce his travel plans, Jackson let slip the rest of his itinerary. He vowed to use his trip to highlight the "unintended by-products" of the NATO air campaign—i.e., the ruined Serbian infrastructure—and to argue the case that the United States shouldn't make humanitarian assistance to Yugoslavia contingent upon Milosevic leaving office. This position, of course, would deprive NATO of what little leverage it still has in attempting to precipitate the Yugoslav president's downfall. But, not overly bothered by the fact that Milosevic is under indictment for war crimes, Jackson feels that the Serbs have a right to keep him as their president—which, of course, would confer upon him a de facto amnesty. "That is a decision to be made by the people in that country," Jackson explained. When asked whether the Clinton administration would oppose Jackson's trip, White House spokesman Joe Lockhart replied, "The White House has no official view of the trip." This is absurd. Last time, the White House at least took the trouble to give Jackson a pre-voyage lecture about the damage his trip could do to the allied war effort. (And even now we don't know how much shorter the war would have been, or how much more legitimacy it would have enjoyed in the eyes of the world, without the propaganda bonanza Jackson's prayer session conferred upon the Balkans' master of disaster.) The White House should not only clearly express its objections to this latest grandstanding pilgrimage by Jackson, it should also spell out the potential consequences. The White House hardly lacks leverage over Jackson. At last check, he still held the (unpaid but prestigious) position of President Clinton's "special envoy" to Africa. Jackson should have been fired from this sinecure the first time he defied the president's wishes in foreign policy. He should be this time.

NOW HE TELLS US: During Clinton's impeachment trial, Governor George W. Bush was careful not to join Tom DeLay and the House Republicans in calling for Clinton's head. The venomous politics of personal destruction, he said, was so terrible that it was even giving him second thoughts about whether he wanted to run for president. This created the impression that Bush was a moderate figure who opposed the Republican zealotry. But now Bush has decided to weigh in on impeachment. He told reporters on June 8 that, if he had been in the Senate last February, he would have voted to remove Clinton from office. "I would have voted for it, yes," he said. "Because I thought the man lied." This is a courageous and definitive stand—except for the fact that it is of no consequence whatsoever now that the debate has been over for months. Perhaps he feels it's safe to do so now that Clinton's popularity has dipped. More likely, he's throwing a bone to his party's far right, just as he did that very same day by taking an anti-tax pledge after previously refusing (wisely) to take such a pledge. Given the chance to show some good sense on June 8, Bush opted, twice, not to take it. DeLay must be thrilled.

POINT OF ORDER: On June 4, President Clinton used a maneuver called a "recess appointment" to push through the nomination of James Hormel, who is openly gay, as ambassador to Luxembourg—thus bypassing the normal requirement for approval by the Senate. Republicans were quick to cry parliamentary foul. Majority Leader Trent Lott blasted the move as "a subversion of the confirmation process." Oklahoma Senator James Inhofe said Clinton had demonstrated "utter contempt of the Senate and its role in the confirmation process." Lott and Inhofe are, of course, correct in their assessment that they've been outfoxed. The Constitution allows for recess appointments (in Article II, Section 2) only because it was written at a time when Congress met far less frequently than it does today. Though the courts have upheld their use even in the modern era, their only real purpose is to bypass nettlesome congressional opposition to appointees, which is hardly in the spirit of constitutional fairness. Yet the Republicans are also being breathtakingly hypocritical. The reason Clinton had to subvert the confirmation process was that the process had already been subverted—by the Republicans. The Senate Foreign Relations Committee, by a vote of 14 to two, had actually approved Hormel's nomination back in 1997; approval by the full Senate would have likely followed. But Lott, acting at the behest of Inhofe and two other far-right Senate Republicans—who claimed to fear that Hormel would foist a "gay agenda" on unwitting Luxembourgians—never allowed the nomination to come up for a vote. Lott has also thwarted votes on the patients' bill of rights, campaign finance reform, and other measures through filibusters and other parliamentary maneuvers. And now Inhofe is threatening to use his senatorial privileges to block all future administration appointments, including that of Deputy Treasury Secretary Larry Summers to be secretary of the Treasury. Frustrated by the purported "subversion" of the confirmation process, the Republicans respond by obliterating it altogether. Now *that's* democratic.

HOME IS WHERE THE HEART IS: Increasingly, Wisconsin is opting to manage its growing prison population the white-collar way—it pays other states to take care of its inmates. Whatever the long-term costs, in the short term this arrangement allows the state to focus resources on politically popular programs such as education and welfare reform, rather than on massive prison construction. But, with the 2000 census rapidly approaching, Wisconsin is suddenly feeling very proprietary about its exported felons. And so Representative Mark Green is pushing legislation that would allow states to include out-of-state prisoners in their census totals. The nearly 4,000 Wisconsin convicts currently serving hard time hundreds of miles from their loved ones will surely be gratified to know that Wisconsin still thinks of them as part of the family. ■

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On the Hill

Guns 'n' Poses

By JIM VANDEHEI

DEMOCRAT BART STUPAK, a folksy "Yooper" from the thick forests of Michigan's Upper Peninsula, is a proud, card-carrying member of the National Rifle Association. So are his wife, his two sons, and, as far as he surmises, most people in his rural Midwest congressional district. "Guns are part of what we grow up with out here," says Stupak, a former cop and an avid sportsman, who himself packs six rifles and three handguns—a Baretta 9mm, a Colt .45, and a Smith & Wesson .38.

Yet, to hear most Democrats tell it—and, for that matter, most of the press—the Bart Stupaks of the world exist only in the extreme confines of the Republican Party. It's the Republicans who take marching orders from the NRA, they all say, and it's the Republicans who will reject any serious gun-control remedies to cure the recent rash of school shootings. Just last week, President Clinton said that he wanted to impose mandatory registration on all gun owners but that he wouldn't even try because the Republican Congress would tear the proposal to shreds.

ROBERT NEUBECKER

What everybody has failed to mention is that the Republican Congress couldn't do the NRA's bidding if it weren't for the surprising number of Democratic gun-control opponents like Stupak. While three-quarters of House Republicans routinely vote the NRA way, the 50 or so NRA loyalists inside the House Democratic Caucus play an essential role in rendering substantive gun-control legislation dead on arrival. Congress might demand new safety locks and clamp down on sales at gun shows in the wake of the Littleton, Colorado, school shootings. But, thanks to these Democrats, the Democratic leadership can't—and won't—seriously push for more draconian measures, such as mandatory registration or new limits on gun purchases, when the House debates the topic next week. The reason: The gun issue could backfire on the party as it did in 1994, when, as Clinton admits, Democrats "lost control of the House of Representatives in all probability because of" his crusade to ban assault weapons.

The numbers speak for themselves. Forty House Democrats were awarded an "A" on the NRA's issue scorecard in 1998, and 15 more are considered by the gun lobby to be reliable friends, according to the NRA's head lobbyist, James Jay Baker. Many of these Democrats are as "extreme" on guns as NRA President Charlton Heston—33 of them, including Caucus Chairman Martin Frost, voted to repeal the ban on semiautomatic weapons in March 1996, for example.

Actions like these have not gone unnoticed. The NRA rewarded pro-gun Democrats with $285,000 in campaign contributions from its political action committee in 1998 and dispatched thousands of local members to assist in their reelection campaigns. "Across the South and West predominantly, there are Democrats who are extremely sensitive to and extremely supportive of their constituents' gun rights," notes Baker.

Most NRA-backed Democrats are Southern conservatives from rural districts, where some folks think the only problem with the Second Amendment is that it should have been the First. But gun control draws support even among some of the caucus's otherwise liberal members. John Dingell, the legendarily liberal Michigan Democrat, "votes down the line with the Democratic leadership, except on gun control," says Baker. Dingell, a sportsman and gun owner, represents a quiet but formidable cadre of liberals from a heavily blue-collar district where 16-point bucks and stacked gun racks are status symbols. As a show of its appreciation, the NRA sent Dingell the legal maximum of $10,000 in PAC money last election.

It was Dingell and Representative David Obey, a liberal from Wisconsin's deer country, who, in the days before the Memorial Day congressional recess, helped convince Minority Leader Dick Gephardt not to turn the Littleton massacre into a new political crusade for the Democrats. They sided with Stupak, who rose to his feet in a private caucus meeting and warned that Democrats such as himself could lose their jobs if the predominant liberal position prevailed.

The idea of politicizing the gun issue is incredibly tempting for the Democratic leadership and irresistible for urban

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liberals, who still rule the caucus. They watched with envy as Senate Democrats scored their biggest political victory of the year when Vice President Al Gore ceremoniously cast the tie-breaking vote to embarrass Republicans on gun control. They also read the latest polls, which illuminate a strong desire among likely voters for stricter gun laws. It's the ideal atmosphere to expose Republicans as radical gun zealots who care more about NRA money than the safety of school children.

But they won't. The truth is, it's not in Gephardt's or his party's self-interest—at least as far as immediate electoral prospects are concerned. Gephardt removed himself from the presidential sweepstakes to concentrate on winning the speakership in 2000, and he knows a serious debate over stricter gun laws could make his job of winning the requisite six additional seats next year impossible. Gephardt has done a masterful job concealing the deep cracks inside his caucus, not just on gun control, but on virtually every major topic the party confronts. A wide-open gun debate would expose those fissures, ripping apart the fraying caucus, so Gephardt is limiting the discussion to weak but symbolic provisions.

And, of course, a frontal assault on guns would invite the full wrath of the NRA, particularly in the most closely fought districts. Gephardt was around in 1994, when Democrats such as Jack Brooks of Texas lost their seats after voting to ban several types of semiautomatic weapons. And members like Stupak and freshman Ken Lucas of Kentucky are constant reminders of what could happen if Gephardt plays with guns too recklessly this time around. Lucas, one of only a handful of Democratic incumbents whom Republicans think they can knock off in 2000, represents an ardently conservative district packed with 11,000 registered NRA members. Gephardt is well aware that Lucas became the first Democrat to win this conservative district in three decades and that his 11,900-vote margin of victory in 1998 could easily be reversed if he's too tough on guns. The same goes for Stupak. Fifty-nine percent of his district's voters backed him in 1998, but, in a region where local schools literally shut down for the opening day of deer-hunting season, a misfire on gun control could end his political career prematurely. "Whether we vote for it or not, if the perception is the Democratic Party is pushing wild gun control, then [we] will lose members, plus [Gephardt] won't pick up those six seats we need in 2000," he warns.

In a sense, the Democratic leadership is simply paying the price for its current electoral strategy, which seeks to wrest control of the House at seemingly any cost. As part of that effort, the party has broadened its ranks, promoting conservative voices who just a few years ago were outcasts. That strategy has paid some dividends already; in 1998, it helped narrow the Republican majority to the six-seat margin that exists today. But it has also forced the party to temper its rhetoric and expectations. If the gun debate has served to highlight well-known weaknesses within the Republican Party, it has also uncovered some internal fissures in the Democratic Party—weaknesses that will only become more apparent as the party inches toward recapturing control of Capitol Hill. ■

Should churches take over social policy?

Faith Healers

By Jacob S. Hacker

Speaking at a Salvation Army center in Atlanta last month, Al Gore announced his support of expanded government subsidies for religious groups that were using the "unique power of faith" to fight America's social ills. With his heavily promoted speech, Gore prominently allied himself with an idea that has, until recently, been associated with the "compassionate conservatism" his leading Republican rival, Texas Governor George W. Bush, champions.

Of course, Gore and Bush are only two of the growing number of politicians from both parties who have called for increased government reliance on the social welfare activities of churches and religious charities—or what supporters like to call "faith-based organizations." The list includes presidential hopefuls—from Bill Bradley to Lamar Alexander—plus countless governors, mayors, and state legislators. In Congress, the movement even has its own advocacy coalition: the Renewal Alliance, a bicameral collection of roughly 30 Republicans organized by former Indiana Senator Dan Coats. Beyond Capitol Hill, it has supporters everywhere from the Heritage Foundation to the Brookings Institution.

That the faith-based agenda is so wildly popular is not altogether surprising. It promises to attack poverty and other social problems not by spending more but by freeing public dollars from the clutches of government bureaucrats and shifting them into the hands of religious institutions. As such, it appeals both to conservatives who wish to downsize the welfare state and to liberals who want to foster grassroots solutions to lingering social problems. But it would be a mistake to read too much into this consensus, for behind it remain two very different visions for the future of the welfare state—one of which, at least, is not as appealing as it might sound at first blush.

Left and right have arrived at this apparent meeting of the minds by strikingly different paths. Recent liberal support for faith-based programs grew out of the Clinton administration's effort to stake out a "Third Way" that combines traditional Democratic goals with greater emphasis on personal responsibility and community values. Since his 1996 declaration that "the era of big government is over," Clinton has been at the forefront of the push for small-scale government interventions designed to enforce widely shared values. Clinton has also been a leading booster of voluntarism and community service, and he has supported efforts to promote cooperation between federal agencies and grassroots organizations. Symbolically appealing yet relatively inexpensive initiatives

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such as this have been central to Clinton's strategy for rebuilding public faith in government and the Democratic Party, and they would likely play the same role in a Gore administration.

But, even today, for all the talk about downsizing the public sector, liberals do not see faith-based organizations as a substitute for government. Quite the contrary, they believe that government and religious charities should coexist and nurture one another—that they are necessary partners in the strengthening of civil society. (Harvard political scientist Robert Putnam, for example, has argued that carefully tailored public policy can invigorate associations and civic networks.) Not coincidentally, their calls for expanding the role of religious institutions comes in the context of calls for more, not less, spending on social welfare.

Conservatives, by contrast, embrace faith-based organizations as an outright alternative to what they ridicule as the clumsy and permissive top-down welfare policies of the past. Echoing moralists such as Marvin Olasky and Gertrude Himmelfarb, they argue that the welfare state has crippled private charity and compassion, which remain the only effective ways to deal with the nation's social problems. Not only should government do less, but social policy must also be, in Himmelfarb's memorable phrase, "remoralized." It's not enough for government to encourage better values; those in need should be forced to conform with community norms, to take responsibility for their failures, to change inside before expecting outside help. Olasky's 1992 book, *The Tragedy of American Compassion*, extols the private relief efforts of the nineteenth century for demanding personal transformation as a condition of aid. "There was a hardness in those days," Olasky writes approvingly, "based on the belief that some individuals needed to suffer in order to be willing to change."

While this strand of conservative thought seems at odds with the familiar libertarian strand in conservative philosophy, it still comes down in favor of reducing the size of government. Indeed, compassionate conservatives frequently seek to cut back public spending and revenues. For example, former Senator Coats's much-heralded 1996 plan for an expanded charitable tax deduction—one prototype for faith-based-services legislation—would have cost tens of billions of dollars, paid for by cuts in existing social programs. The Renewal Alliance in Congress supports a similar initiative that would allow states to pay for expanded tax breaks for charity by siphoning off up to half of their welfare block grants. These proposals do not represent a new antipoverty crusade so much as they do a renewed push to privatize public responsibilities—or to abdicate them altogether.

As long as the issue at hand involves shifting relatively modest amounts of money, these different agendas don't really matter. Giving a slightly greater role to religious institutions is harmless, maybe even beneficial, and something on which both sides can agree. But liberals will naturally grow suspicious as conservatives push to off-load ever-greater portions of the welfare burden onto faith-based groups. They will argue that this represents a wholesale change in the philosophy of the welfare state, one that would jeopardize the well-being of the people who rely on it. And, based on the available evidence, they will be right to do so.

To begin with, it remains an open question just how effective faith-based organizations really would be in a greatly expanded role. Those who champion faith-based programs tend to cite the same familiar examples—Eugene Rivers's Azusa Christian Community in Boston, which has spearheaded community efforts to revitalize inner-city Boston; or Charles Colson's Prison Fellowship ministry, which provides faith-based counseling in prisons across the nation. But systematic research on these and similar programs is meager. And, although some evidence suggests the power of the "faith factor," studies of faith-based programs suffer from the methodological difficulty that many of the programs deemed most successful are small and idiosyncratic, hindering comparison or generalization. Worse, evaluations of faith-based programs inevitably confront the problem of self-selection: people who turn to faith-based charities are likely to be particularly receptive to the message they deliver. The failure of most studies to control adequately for personal and social characteristics that might be associated with participation in faith-based programs makes it hard to know if faith is the key ingredient of these programs' successes, or if faith-based interventions could be replicated on a broader scale.

Even if faith-based programs do prove broadly effective, the current scale and scope of these programs means they are, in all likelihood, incapable of bearing too ambitious a burden. State, local, and federal spending on social programs was more than $1.4 trillion in 1994. And this figure does not even include the scores of tax breaks and credit subsidies that have social welfare aims or the extensive spending channeled through private health insurance and other employer-provided benefits—which, all told, would perhaps double the official figure. In contrast, the annual private social spending by congregations, national faith-based charities like the Salvation Army, and other religious organizations is probably not more than $15 billion to $20 billion per year, according to research supported by the nonpartisan Aspen Institute. This is by no means a trivial amount, and it does not account for unpaid volunteer work. But, even if the total contribution of religious organizations was several times larger than the best current estimates, it would still be tiny compared with government spending. To expect institutions of this scope to dramatically expand their infrastructure and expertise in response to new government grants—much less to become the nation's core providers of social assistance—is unrealistic.

Nor are the limited resources controlled by faith-based organizations distributed evenly across American communities. A common theme of recent encomiums to faith-based charities is that their activities are most valuable and vibrant in the poorest inner-city communities. They may well be, but, perversely, the resources available to religious organizations are most limited precisely where the need is greatest.

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Although the pattern of giving to religious charities is complex, the rate of private donation is generally higher in wealthier communities and lower where social conditions are worse. Larger and wealthier congregations provide services more often, and the congregations most likely to be involved in service provision are in the suburbs, not the inner cities. Even accounting for the long tradition of community outreach in urban African American churches, faith-based organizations in poorer communities still have great trouble raising the private funds necessary to support their programs, particularly as they face far more pervasive and immediate needs. For more than a decade, moreover, the share of private religious giving that is slated for activities not directly tied to a local church has fallen, making the problem of community resource disparities all the more pressing.

INDEED, MANY FAITH-BASED programs active in low-income neighborhoods must already rely on another source for help, and it's the very source many conservatives want to downsize: the government. As Johns Hopkins University political scientist Lester Salamon has argued in a series of influential studies, cooperation between government and nonprofit service providers—including religiously affiliated nonprofits—is a longstanding and pervasive feature of U.S. social policy. Although churches themselves have not been prominent recipients of government funds, many collaborate with local agencies in other ways, sharing information and even providing volunteers for public programs. More important, many religiously affiliated organizations—from national religious networks such as Catholic Charities USA to local faith-based initiatives—do receive government funds, either directly or through separate nonprofit organizations specifically chartered to deliver social services. Catholic Charities USA, for example, receives more than 60 percent of its funding from federal, state, and local governments. Among nonprofit human service providers as a whole, the government now supplies a greater share of operating funds than does private giving. And these funds come on top of the significant tax advantage enjoyed by nonprofit organizations and Americans who donate to them.

None of this is to deny the immense value of faith-based organizations or to say that they cannot play a somewhat larger role in our social welfare strategy. But to ascribe to faith-based organizations a magical power to heal all social ills is to forget how limited their resources are and always will be, how insufficient their activities were before the arrival of the welfare state and still are today, and how extensively their success depends on a steady supply of public funds and interaction with government agencies. It is also to forget that the strength of many of these institutions rests precisely on their voluntary character—and on their ability to advance beliefs that are sectarian, exclusionary, and even offensive to some. It's not surprising that many conservatives who have long wanted to scale back government believe that faith-based programs can do nearly everything the state now does, only better. What's surprising is that so many people are taking the idea seriously. ■

Starr Wars: The Finale

Background Noise

By DAVID GRANN

WHEN I FIRST met Charles Bakaly, his life had not yet become a Washington parable. It was before he went to work as Ken Starr's spokesman and before he became the only figure in the Monica Lewinsky affair still potentially facing time in prison. It was the fall of 1997, and Bakaly, a little-known Los Angeles attorney, was still working for Donald Smaltz—the independent counsel investigating former U.S. Agriculture Secretary Michael Espy for alleged corruption.

The Espy probe was almost a prototype for Starr's investigation of Clinton: Smaltz's agents had spent more than four years and $17 million futilely trying to prove that Espy had accepted a few thousand dollars in illegal gifts from lobbyists. That autumn, when I went to interview Smaltz at his office in Alexandria, Virginia, Bakaly greeted me outside. His hair was slicked back, and he wore black suspenders and a starched blue shirt with a white collar and cuffs. Tall and lean, he resembled a White House aide or lobbyist—a player. Except that he seemed nervous. "Do you mind if I smoke?" he asked.

I shook my head, and he extended his cigarette at arm's length and studied it. "Let's go on background," he said. Thereafter, although he revealed nothing confidential or illegal, he seemed more at ease, as if this were the way things are done in Washington: on background, outside, in the cold.

More than a year later, just such a seemingly simple gesture appears to have ended Bakaly's career. Last March, he abruptly resigned when Starr asked the Justice Department to consider criminal charges against him for allegedly leaking a story and lying about it to investigators.

The story, which appeared in *The New York Times* at the height of the impeachment trial in January, reported that the independent counsel believed he had the constitutional authority to indict President Clinton. Citing several "associates" close to Starr, the article unleashed a furor. Senate Democrats rushed to accuse Starr of trying to influence the outcome of the final vote. David Kendall, Clinton's personal lawyer, filed a motion in court demanding that Starr and his aides be held in contempt for "improper violations of grand jury secrecy." On ABC's "Good Morning America," meanwhile, Bakaly swore that neither he nor anyone else in Starr's office was the source. "We did not leak this information," he insisted.

Six weeks later, when the independent counsel suddenly seemed to finger his own spokesman, Starr's critics exulted. "WHAT GOES AROUND, COMES AROUND," the New York *Daily News* editorialized. As always, Bakaly issued a statement—only this one through his lawyer, saying he had resigned from

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his job and would cooperate "in every way" with the Justice Department's inquiry. Though he maintained his innocence, almost no one rose to his defense. And, within days, Bakaly had vanished, first from the talk shows, then the papers, then consciousness. He had become a historical footnote: Starr's last victim.

There is, of course, something familiar, even clichéd, about the rise and fall of Charles Bakaly, a man consumed by the very forces he helped set in motion. But there is also something newer and more significant. Just as Starr and Smaltz took routine, if sometimes unsavory, behavior and made it criminal, this final chapter of the Starr investigation threatens to make a felony out of one of the oldest practices in Washington scandals: the leak.

CHARLES G. BAKALY III always wanted to be a player. His father, the son of a poor grocer who had emigrated from Greece with the name Vakalopolis, used to spend his evenings walking through Bakaly's California neighborhood rounding up votes as a Republican precinct captain. On election nights, the family would often dress up, as if it were Easter. "We grew up around government," says Charles's younger brother, Tom, "and Charlie and I both took a shine to that." So few were surprised when, after law school, Charles packed his bags and went to work for President Reagan's advance team.

It was rather inglorious labor, but he seemed to relish it. "I got the feeling he felt that everything he did was very important," recalls Michael Deaver, Reagan's deputy chief of staff. According to his colleagues, Bakaly tried to model himself after Treasury Secretary James Baker, for whom he worked as an assistant in 1985. He started to wear fancier suits and slicked his hair back. It was in the office of the original spinmeister that he might also have learned the art of the leak.

On Baker's advice, Bakaly eventually returned to California to practice law. Though still pitching in on local politics, his friends say he missed the whiff of intrigue. And, in 1994, when a federal court appointed Smaltz independent counsel, Bakaly jumped at the chance to become his chief deputy. But, as the Espy case moved closer to trial, Bakaly ceded his place to more experienced prosecutors and drifted back home. Finally, in 1998, more than a decade since he'd left Baker's office, one of the most powerful men in America asked him to come back and whisper in his ear.

Bakaly's office was only a few feet from Starr's, and he had access to the most important information. He would often remind reporters that his title was in fact "counselor," not "spokesman." And, compared to Starr's politically tone-deaf prosecutors, associates say, he sounded smart and savvy: an operator. "We're very, very happy with him," Jackie Bennett, one of Starr's lieutenants, told the *Legal Times* on May 11, 1998.

Under Bakaly, the press office changed. While infuriating many reporters by not returning their calls, he cultivated selected journalists at major publications and networks. He launched a website and fired off letters to editors. When *U.S. News & World Report* ran an editorial denouncing leaks from Starr's office, Bakaly called reporters there and threatened not to speak to them again.

He increasingly became the public face of the prosecution. He strode out before the throng on the courthouse steps in his pink shirts and floral ties and appeared on the Sunday talk shows with his hair gleaming. Even as the White House denounced his p.r. campaign and his critics said he had become a zealot, Bakaly seemed to revel in his newfound status. "He was right where he wanted to be," says Mark Geragos, an old friend of Bakaly's who also happens to be Susan McDougal's lawyer. "In the eye of the hurricane."

Indeed, on September 9, 1998, Bakaly put on a pin-striped suit and drove to the steps of the Capitol. In his hand was a referral for impeachment, the first from an independent counsel in history. "One, two, three, here comes Charles Bakaly," CNN's Bob Franken shouted. Bakaly stepped up to the mikes as a crush of reporters and police surrounded him. "My name is Charles Bakaly," he said proudly, adding: "We have fulfilled our duty."

SIX MONTHS LATER, he was gone, apparently felled by 28 words tucked into the vast rules of criminal procedure: "[A]n attorney for the Government ... shall not disclose matters occurring before the grand jury.... A knowing violation for Rule 6 may be punished as a contempt of court."

The regulation, adopted in 1944, codified a longstanding American tradition of grand jury secrecy. The idea behind the rule was simple and elegant: without it, witnesses might fear retribution, suspects might flee, and, most importantly, those exonerated by the grand jury might suffer nonetheless from public ridicule. But, in cases involving government officials, where there is also a public need for information, the law had generally been interpreted loosely. "[I]n cases involving well-known people," then-U.S. Attorney for the District of Columbia (and now Deputy Attorney General) Eric Holder wrote in 1995, "the public has a right to be kept reasonably informed." In a 1987 D.C. Circuit opinion written by Ruth Bader Ginsburg, the court noted that it had "never embraced a reading" of Rule 6(e) "so literal as to draw 'a veil of secrecy ... over all matters occurring in the world that happen to be investigated by a grand jury.'"

Until Bakaly, these contradictory traditions had coexisted relatively gracefully: the law was strict enough to keep prosecutors from leaking slanderous information but loose enough to keep the electorate enlightened about ongoing probes that were of current political relevance. It was common practice, for example, to say how long an investigation might last or what direction it might take.

In the inquisitorial atmosphere created by the independent counsel law, however, this routine act became another target of investigation. After Starr's office began to leak information to the press, the president's defenders tried to do to Starr what they had always condemned him for doing: criminalizing activity that was certainly a bit unethical but not necessarily felonious or, at least, not worthy of prosecution. On February 6, 1998, David Kendall wrote a 15-page letter citing some 40 examples of alleged illegal leaks from Starr's office, though some contained little, if any, direct grand jury material.

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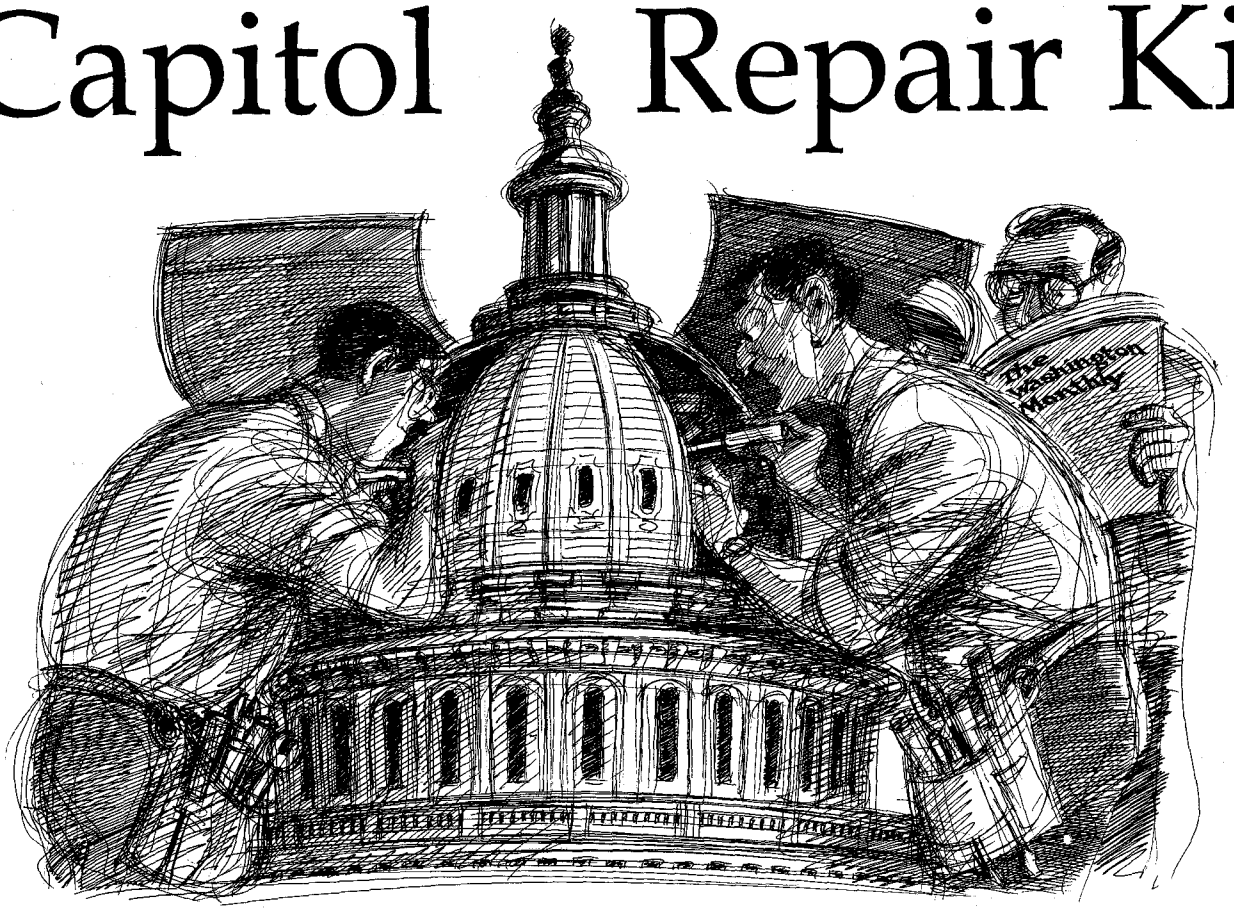

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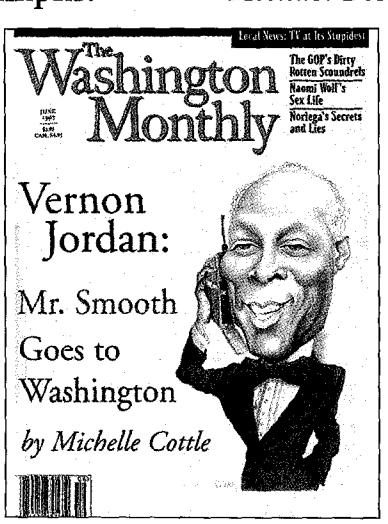
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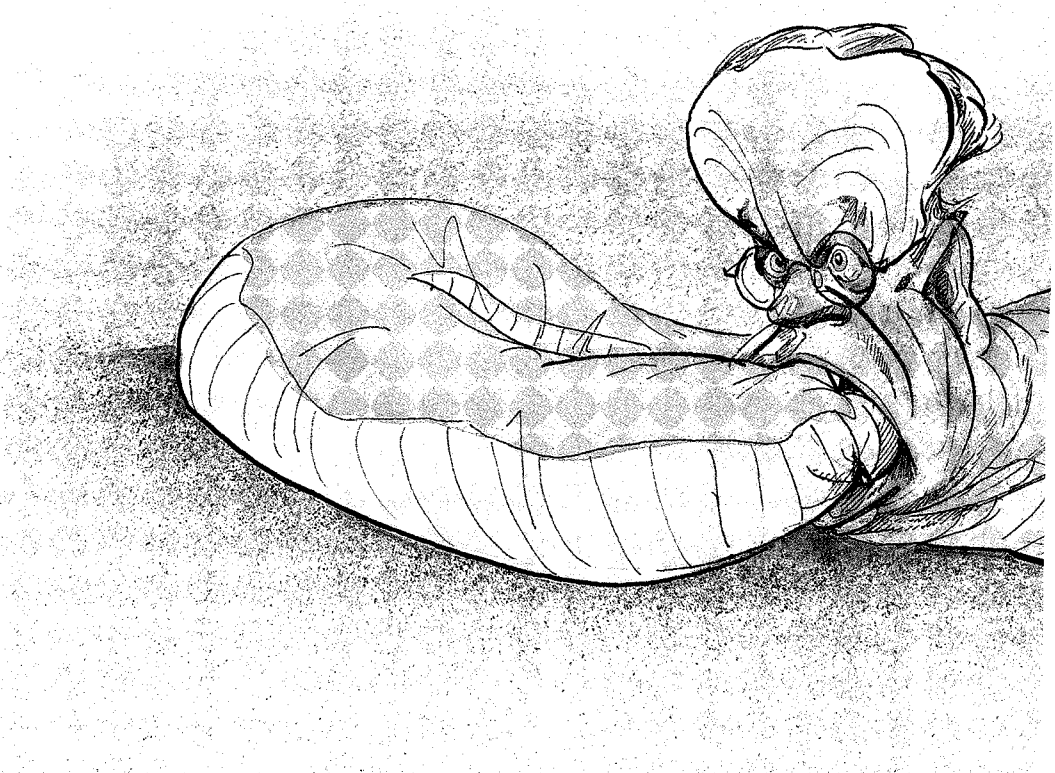

In September, the court appointed a "special master" to investigate 24 potential violations. More significantly, the judge in the case, Norma Holloway Johnson, drawing on a 1998 D.C. Circuit decision concerning sealed documents, took almost as strict and radical a view of 6(e) as Kendall. In her opinion, she maintained that, in the future, the secrecy rules would cover "not only what has occurred and what is occurring, but also what is likely to occur" before the grand jury, including the prosecutor's own views about the "strategy or direction of the investigation."

And so the Starr investigation finally unleashed its fury on itself. According to four people close to the case (two sympathetic to Bakaly, one antagonistic, and another neutral), Starr launched an internal probe to find the source of the *Times*' leak. During that probe, these sources say, Bakaly misrepresented how much he had told the *Times* reporter. Armed with evidence of this, three of Starr's prosecutors, including Jackie Bennett (who has himself been fingered as a leaker by some press accounts) and Michael Emmick, drove out to Bakaly's house in Maryland and confronted him, according to these sources. During the interrogation, one of the sources says, Bakaly tried to contact Starr, whom he considered a friend, but was told he couldn't. He was then, as one of Bakaly's close friends puts it, "cannibalized" by his own people.

WHETHER BAKALY ACTUALLY ever violated 6(e), even in its most expansive reading, remains an open question. According to several reporters who closely covered the independent counsel's office, Bakaly was extremely cautious. While he frequently talked on background, as he had with me, they insist that, unlike others in Starr's office, he never revealed any grand jury secrets. What's more, the more troublesome leaks on Kendall's list—the February 1998 *New York Times* story about Betty Currie's grand jury testimony on President Clinton's alleged "coaching" of her testimony, for instance—happened before Bakaly even arrived at Starr's office. Says an investigative reporter who dealt with the independent counsel's office daily: "He is just a scapegoat."

In fact, the very story for which he was initially investigated was not only the kind of information ordinarily considered essential to a democracy; it was old news. *The Washington Post*, *U.S. News & World Report*, and *The Washington Times* had all previously reported that Starr considered indicting Clinton an option. Bakaly, obviously believing he was within the limits of the law, had even suggested as much on television seven months earlier. "It would be absurd to proceed on the basis of that [leak] even if Mr. Bakaly had denied to investigators discussing it with the press when in fact he had," says Richard Ben-Veniste, a former Watergate prosecutor who has often criticized Starr's office for improper leaks.

But, according to three lawyers close to the case, that is precisely what happened: the matter was referred to the Justice Department, not so much because of the leak, but because of the allegedly false statement Bakaly made about it to Starr's investigators. In other words, Starr had ensnared his own man in a kind of perjury trap. If this is indeed the case, then, just as with so many other independent counsel investigations, the cover-up became the crime even though there was no original crime to cover up.

As a result, some friends suggest that Bakaly has become so embittered by Starr and what he has done that Bakaly might be ready to turn on him and give evidence to the Justice Department about other colleagues' possible abuses. As if to make the threat palpable, he has hired as his lawyer Howard Shapiro, the FBI's former legal counsel and Starr's nemesis during Filegate. One person even says that Bakaly would have been willing to testify for the defense if the Susan McDougal case had been retried. "All I'll say is I think it's been an eye-opener for him," says Geragos, McDougal's lawyer.

BUT THE TRUTH about the case is that it is impossible to find out the truth about what really happened, or what is happening, to Bakaly. As prosecutors, FBI agents, and defense attorneys become more wary of doing what they always have—giving reporters basic information on background—even cases apparently involving no grand jury material have become shrouded in secrecy. For instance, under Holloway's radical new standard, which now

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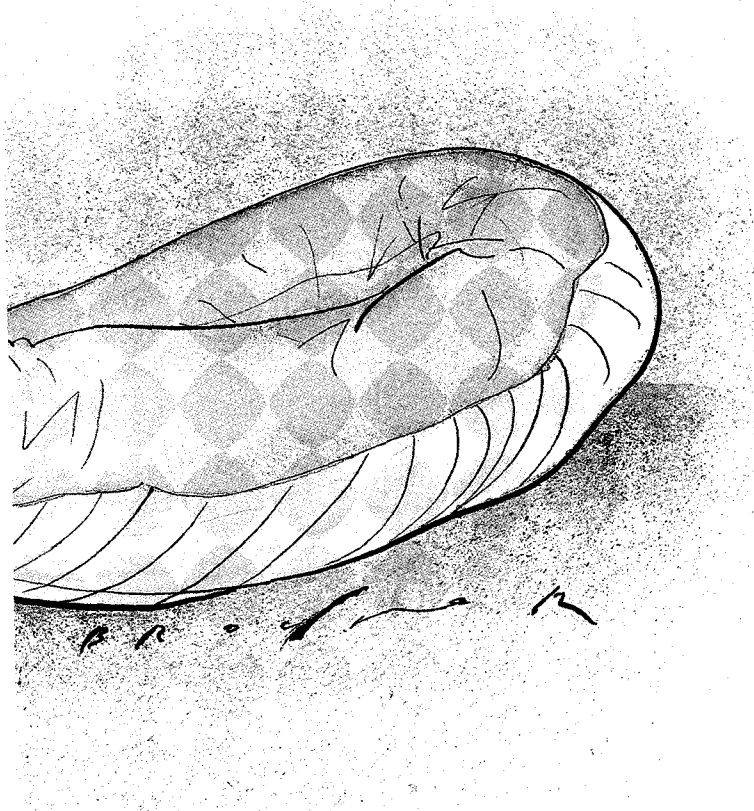

applies to any grand jury investigation in Washington, it might be against the law merely to say, as Attorney General Janet Reno did in the Oklahoma City bombing case, that the government intended to pursue the death penalty—since such a remark suggests the "strategy or direction" of an investigation. This would "make felons out of half the Department of Justice," says one reporter who has covered the agency.

Even if Bakaly isn't ultimately prosecuted for leaking (as opposed to lying about the leak), the precedent set by Judge Holloway's ruling has already created paranoia throughout Washington legal circles. "My sense is that there is already almost this blackout in terms of talking to Justice prosecutors," says Theodore Boutrous, an attorney who has represented several newspapers suing to unseal documents in the Starr investigation. "Reporters at the last Christmas party were walking up to people and having them turn and run. It's hard to imagine that this is happening in the United States."

As I set out to report on Bakaly's predicament, I began to see what Boutrous means. When I called the FBI, the spokesman who normally comments said, "We cannot comment." When I called the Justice Department, an official there asked, "Have you tried Starr's office?" At Starr's office, Bakaly's successor agreed to give me an official comment, only to announce that it was: "We are making no comment." Kendall, the man who helped spawn all this, complained, "I'm up to my eyelashes in leaks," then fell silent. Even Shapiro, Bakaly's lawyer, refused the chance to tell his client's side of the story. "It's not worth risking my career over," he explained.

Finally, I called Bakaly late one night. "Let me switch to a hard phone," he said. I reached for my pen in anticipation, thinking of our first encounter. But times had changed. "I'd like to be able to comment," he said, "but I can't." ■

A Europe united in spirit—against the United States.

Continental Drift

By JEFFREY GEDMIN

IF THE DEAL between Yugoslavia and NATO over Kosovo sticks, expect the Clinton administration to claim vindication and to speak of a victory for American leadership via NATO. But Europe's own early postmortems suggest that our allies might be drawing rather different conclusions. Privately, politically influential Europeans generally consider the U.S.-led operation in Kosovo to have been a fiasco. Allied lives have been spared, but calculations of an early victory proved disastrously wrong. The Kosovars, whom we started the fighting to protect, have been decimated. There were 90,000 refugees before the bombing began. Estimates of the homeless now exceed one million. Apart from the expulsions, the Serbs have been able to murder and torture thousands, perhaps even tens of thousands, of ethnic Albanians, while NATO has run its patient, high-altitude, low-risk air campaign.

Thus, in Europe, a quiet consensus has emerged that, if NATO does ultimately prevail, it will be in spite of rather than because of U.S. leadership. And, predictably, those among our allies who want to create a European federal superstate that would compete with the United States and snap the transatlantic link are using the Kosovo episode as grist for their mill. As the German weekly *Der Spiegel* put it, "[A]fter ten weeks of war in Yugoslavia, one thing has become clear across Europe: the hegemony of the U.S. and NATO is limited as a model for the future."

Although this view is widely held across Europe, different countries subscribe to it for different reasons. To the Germans and the French, the air campaign pointed to an American tendency to rely primarily on the use of force to the neglect of diplomacy. For instance, Bavaria's conservative Governor Edmond Stoiber—a probable future candidate for chancellor—has hinted that NATO is to blame for having left the Russians out initially and for putting diplomacy on the back burner these past two months. And Stoiber was one of a number of prominent Germans who have turned up in Moscow during the conflict. Moreover, voices on the left and the right across the continent have been arguing that it's the American-dominated NATO that has made a deal with Milosevic so difficult to reach. What's needed, these numerous critics contend, is more involvement by the European Union, the United Nations, and the

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Organization for Security and Cooperation in Europe.

Not surprisingly, anti-American forces are working hard to exploit this mood. In a full-page essay recently published in the German daily *Frankfurter Rundschau*, Paul Welfens, a professor at the University of Potsdam and president of the European Institute for International Economic Relations, wrote that the United States "experiences once again a war far from its homeland ... [and this time] at the cost of the Europeans."

Publicly, of course, Germany's political establishment has offered clear and unwavering support for the air war. But privately the Germans have reacted testily to Washington's badgering about Germany's playing a weightier role in the conflict. Bonn figures it has a right to call more of the shots since Germany and the EU will foot the bill for economic reconstruction when the bombing has finally stopped. France's government, too, is already staking out territory. It wants an eventual civilian administration in Kosovo to be run entirely as a protectorate of the European Union.

MANY BRITISH ARE also attracted by the prospect of a shift toward European, rather than American, leadership on the continent. There are many reasons for this, at least one of which is quite different from the reason motivating their continental allies: in the case of Kosovo, many in the Blair camp have been concerned not by the U.S. propensity to use force but by the tentativeness it has displayed in doing so.

Notwithstanding the two countries' "special" relationship, the Kosovo conflict has sparked serious behind-the-scenes tension between the United States and Great Britain over just this issue. The U.K. has pushed openly, much to the annoyance of the American president, for ground troops. At times during the conflict, Blair aides have returned from consultations in Washington with the feeling that Clinton was simply not fully engaged. Blairites deride privately what they call the "ABC problem," a reference to Secretary of State Madeleine Albright, national security adviser Sandy Berger, and Secretary of Defense Bill Cohen—and a reflection of London's increasing lack of confidence in the Clinton foreign policy team.

Of course, the Europeans are griping even though they had a hand in this mess as well. The Germans opposed ground troops. The Italians and others tried at the outset to restrict bombing missions over Serbia, ostensibly because of worries about cultural sites. But, as Bismarck once said, every alliance has its horse and its rider, and it was up to the United States to identify the right choices and then to create a consensus in support of them. With its adamant stance against ground troops, or even the use of low-flying Apache helicopters, the United States did the exact opposite. In short, "it has been hardly inspired leadership from America," says Charles Grant, director of the Center for European Reform, a London-based think tank with close ties to the Blair government. "The very weakness of US leadership," concludes the *Financial Times*, "[has] almost certainly prolonged the campaign" and has raised "serious questions ... about the relationships between the US and Europe."

The assumption here is that, in a mainly European alliance, Britain might in the future, through its own steadfast example, lead its fellow European nations to adopt a bolder approach. Indeed, the Kosovo debacle has increased talk in European capitals of a Common Foreign and Security Policy and a European Security and Defense Identity that would be under the EU's own control. Anything of the sort will be toothless without NATO assets, Europeans readily concede. The Europeans still spend roughly one-third less than the United States does on defense. But that's not the point. Calls for a stronger EU are increasingly calls for Europe to define itself as a political counterweight to the United States. Maybe it's Kosovo, and not the euro, writes *Der Spiegel*, that will launch the new Europe and lead to full "emancipation" from the United States.

THIS NEWFOUND ASSERTIVENESS on the part of our European allies should hardly come as a shock. The EU has long been prickly about what it sees as an American bid for global hegemony, so it was predictable that Washington's wavering performance in Kosovo would bring out Europe's anti-Atlanticist tendencies. Albright's heavy-handed style, her talk of the United States as "the indispensable nation," and the like haven't helped matters.

In direct competition with NATO, then, the EU is struggling to claim control and credit for success wherever opportunities arise. Symbolism, in this regard, speaks louder than words. After sealing the Kosovo deal with Milosevic on June 3, Finnish President Martti Ahtisaari passed up a press conference with American Deputy Secretary of State Strobe Talbott in Bonn. Instead, he rushed to Cologne, where his EU colleagues were holding a summit, in order to unveil the deal there. As news of the agreement broke, an interviewer on German television pressed Guenter Verheugen, a top Foreign Ministry official, to answer the real question of the day: Was it the Americans or the EU who would "bring peace back to Europe?" EU leaders could hardly conceal their glee. Bosnia may have been settled in Dayton, "but this time Europe's conflict was being resolved in Cologne," an aide to German Chancellor Gerhard Schroeder crowed.

The new Europeanism is also a natural result of the end of the cold war. A new generation is coming to power, and Western Europeans of all political stripes want the EU to cultivate its own new identity. Europeans want to do more. There's nothing inherently wrong with that. And the United States should prepare for changes in the character of a post-cold-war transatlantic relationship.

Still, where will this lead? Josef Joffe of Germany's *Süddeutsche Zeitung* suggests that maybe Europe will indeed be able to manage its security by itself one day. But "it would be madness," says Joffe, "to jeopardize the alliance in the meantime." That's logical. But logic cannot always be counted on to restrain the juiced impulses of European arrogance and latent anti-Americanism. Which means that any emerging "victory" in Kosovo may be a Pyrrhic one, in the sense that America's mismanagement of the crisis, real and perceived, has fed the forces that could eventually lead to the alliance's demise. ■

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Why sovereignty is overrated.

Borderline Insanity

By JACOB HEILBRUNN

IF IT REALLY does produce a Serb pullout from Kosovo and a return of the refugees, the Clinton administration's air campaign against the Serbs may silence both its hawkish and its dovish critics. But it will do nothing to quiet a third, and more radical, camp that has emerged in recent weeks. Made up of a motley crew of crypto-isolationists and foreign policy realists, it charges that the United States is the real Balkan aggressor. "Kosovo is like any of the United States is to Greater Serbia," declared Republican Congressman Randy Cunningham during a volatile March 11 House debate on intervention. "It is their home. It was occupied by one hundred percent Serbs." Congressman Scott McInnis added, "We have never gone into the sovereign territory of another country like this without being invited to settle a dispute within their boundaries." And David Fromkin, a professor at Boston University, wrote in the March 31 *Wall Street Journal* that even Woodrow Wilson wouldn't have intervened: "[A]s a general rule, we believe in the integrity of countries, not in the independence of nations."

Do we? The Kosovo conflict has raised a fundamental question that the Clinton administration has not yet squarely confronted: namely, whether the United States should champion sovereignty or self-determination in dealing with foreign nations and their internal national minorities and national liberation movements. As China and Russia realize, that question is not exactly an academic one. From Taiwan to Chechnya, neither power wants to see any kind of precedent set for outside intervention. And, though the Clinton administration has infuriated the Chinese and Russians just by bombing, it has acceded, by and large, to Serb definitions of sovereignty, at least in refusing to endorse independence for Kosovo. "Our goal for Kosovo should not be independence, but interdependence," President Clinton has said. Yet there may be cogent moral and realpolitik reasons for the United States to take another step—to end its historically recent refusal to alter borders and, in cases where empires or multiethnic states are disintegrating, to recognize and assist legitimate self-determination movements.

For one thing, the notion that the United States has always been a status quo power opposed to self-determination is quite wrong. The American Revolution was itself a national liberation movement assisted by the French. "They will cast your sovereignty in your face," Edmund Burke warned the British Parliament. "Nobody will be argued into slavery." The American crusading spirit against empire did not flag: even the conservative realist Alexander Hamilton declared in *The Federalist* that "Europe, by her arms and by her negotiations, by force and by fraud, has in different degrees extended her dominion.... It belongs to us to vindicate the honor of the human race, and to teach that assuming brother moderation."

Still, as a fledgling power in the nineteenth century, America could do little more than hail the Hungarian rebel Lajos Kossuth on his tour of the United States and send the odd volunteer to Greece and Cuba. It was in Great Britain that liberals and radicals formulated the ideas that would later mutate into Woodrow Wilson's Fourteen Points. In a precursor to today's debates about intervention, Gladstone decried Disraeli's cold-blooded indifference to the 1876 depredations of the Turks in Bulgaria and called for a "public law of Europe." Transforming Gladstonian fustian into a coherent ideology, Wilson announced in the Fourteen Points that "peoples and provinces must not be bartered about from sovereignty to sovereignty as if they were chattels or pawns in a game."

With the Treaty of Versailles and the apparent self-repudiation by Wilson of his own ideals, the United States retreated into an isolationism—from which it was roused by Japanese and German efforts to redraw the world's borders to their own advantage. For Wilson's great successor, Franklin Roosevelt, the war offered the chance not only to restore the existence of the "captive nations" but also to usher in a new great age of decolonization. Self-determination was back. Roosevelt's fixation with breaking up the British empire, however, meant that he remained rather oblivious to the rise of the Soviet one. For decades, Eastern Europe was a Republican bugbear, but, with the rise to power of Richard Nixon and Henry Kissinger, both disciples of realism, Soviet domination was essentially sanctioned in the form of the Sonnenfeldt doctrine, which conceded Soviet control over Eastern Europe as justified. Geopolitical "stability," not human rights, was seen as the paramount goal.

Both Jimmy Carter and Ronald Reagan repudiated this line, but George Bush revived it. Bushism was modified Kissingerism. In three areas—the collapse of the Soviet Union, the Gulf war, and the disintegration of Yugoslavia—the United States spurned self-determination in favor of "stability." And, in each instance, its approach backfired.

IN THE CASE of the Soviet Union, the Bush administration attempted to prop up the Gorbachev government. Bush delayed recognition of the independence of the Baltic states (even though the U.S. government had never officially recognized their forcible incorporation into the Soviet Union by Stalin). And, in his notorious "Chicken Kiev" speech, Bush warned the independence movements within the Soviet Union not to follow a "hopeless course of isolation."

So advanced was the Soviet Union's internal decay that Bush's adherence to realist tenets ended up being irrelevant. Despite the warnings from the realists, the Soviet Union disbanded with a minimum of bloodshed, Germany was reunified, and even the Czechs and Slovaks managed to separate peacefully. Nagorno-Karabakh and Georgia and Chechnya have been the sites of atrocious violence, but, judged by comparison with, say, the massacres that took place in India after

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the British exit, the breakup of the Soviet Union was a fairly peaceful experience. What is more, the ubiquitous predictions about chaos and anarchy across the former Soviet territories have not come to pass—at least not yet. Instead, the Central Asian states and Ukraine have abjured the use of nuclear weapons, and Western oil companies have set up shop in these friendly countries. Despite forecasts of ethnic conflict, the large minority Russian groups in the Baltic states, as James Kurth notes in the Summer 1999 *National Interest*, actually prefer to remain where they are: "[I]t is better to be a second-class citizen in Estonia or Latvia than to be a first-class citizen in Russia."

UNLIKE THE SOVIET case, when it came to the Gulf war, the Bush administration's refusal to contemplate any border changes had serious consequences. Once again, Kissingerian realism dominated. "It was clearly a realist strategy," Bush's national security adviser, Brent Scowcroft, told TNR's John B. Judis. "You don't take on some of these great social experiment kinds of things that get you bogged down, that you cannot do successfully." (See "Statecraft and Scowcroft," February 24, 1992.) The Bush administration went to war to defend Kuwait's borders. It did not go to war to revise Iraq's. As Strobe Talbott perceptively observed in the December 1991 *Foreign Affairs*, "The three sub-Saharan nations in the coalition—Niger, Senegal, and Sierra Leone—sent troops to the gulf largely because their governments wished to nip in the bud the idea that post-colonial frontiers were subject to adjustment unilaterally and by force." The unfortunate policy implication of the Bush administration's assumption that Iraq should not be occupied was that the United States should wait for the Iraqi army to topple Saddam. This did not occur. In the end, the United States once more abandoned the Kurds and Shiites in the North and South—Kissinger had done so previously in 1975—who rose against Saddam in the expectation, not wholly unreasonable, that the United States would protect them. In his memoirs, Bush laments not having stopped the Iraqis from deploying helicopter gunships against the helpless Kurds and Shiites.

But it is in Yugoslavia that Bush's worship of stability most clearly helped create the very chaos it was supposed to avert. In June 1991, Secretary of State James Baker visited Belgrade and supported Yugoslavia's "territorial integrity" at the moment that Slovenia and Croatia were moving to secede. The Bush administration went on to waive recently imposed congressional sanctions against Serbia. Even after Germany and 38 other states had recognized Croatian and Slovenian independence, the Bush administration clung to its policy until April 1992. This policy, far from preserving stability, undermined it.

Yet skeptics of self-determination adduce the Yugoslav example as Exhibit A of the perils of backing national movements. "The peaceful breakup of repressive multinational entities might be desirable when the new states born of their demise are liberal in character," the University of Chicago's Gidon Gottlieb has noted. "In practice, however, the revision of boundaries is likely to embroil entire regions in hideous strife similar to the Yugoslav war." But this may be something of a turnip-ghost. It is precisely when legitimate ethnic aspirations are suppressed by either a great dictator or even a small potentate, as in the case of Slobodan Milosevic, that conflict is bound to erupt and nationalist impulses to become channeled in an illiberal direction (as in the case of the Kosovo Liberation Army). In any case, what better way could there be to prevent future warfare in the Balkans and protect minorities than to have independent states surrounding Serbia that can defend themselves militarily and form alliances? If the United States does not follow this policy, it will remain mired in the Balkans indefinitely as the overlord of various protectorates.

But the doubters have other doubts. "To invoke the general principle of self-determination, and to make it a supreme law of international law," wrote Walter Lippmann, coauthor of the Fourteen Points turned arch-realist, is "to invite sheer anarchy. For the principle can be used to promote the dismemberment of practically every organized state." Lippmann's realist disciple, Fromkin, agrees. "Estimates of the groups claiming to be nations," he writes, "vary between 5,000 and 10,000, and a world divided into that many sovereignties would be anarchic indeed." Indeed it would. But the imprecision of such estimates suggests that they are meaningless.

IN TRUTH, THE number of ethnic minorities actually capable of creating, not just envisioning, viable states is most likely in the dozens, not in the thousands. Are the Sorbs or Wends really about to call for their own nations inside Germany? It's the Kurds and the Tibetans and the East Timorese who could create functioning states. Moreover, even at the risk of inconsistency, there is no sound reason for the United States to grant each request for recognition. Radical ethnic or religious groups need not apply. But it's not as though the United States doesn't already draw distinctions among the areas where it does, and does not, choose to intervene.

Indeed, if experience with counterinsurgency movements is any guide, it would be a mistake for the United States to foment rebellion in Russia, China, Indonesia, or other parts of the globe. But supporting legitimate nationalist aspirations is both idealistic and practical. On the one hand, it acknowledges the most powerful liberal force to emerge from the nineteenth century. "The world should be split into as many states as humanity is divided into nations," wrote the Swiss international lawyer Johann Caspar Bluntschli in 1870. "Each nation a state, each state a national being." On the other hand, the more splintered the world becomes, the less chance there is of a rival power emerging to check current American dominance. Should China or Russia succumb to their fissiparous tendencies, U.S. preeminence will be sealed.

As NATO pounded the Serbs into submission, the Clinton administration had a golden opportunity to relinquish the idea that borders must remain sacrosanct. Instead of capitulating to demands for respecting Serb sovereignty, it should have forced Belgrade to acknowledge the independence of Kosovo and to hand over its indicted war criminals. The problem with American foreign policy is not that it challenges national sovereignty but that it does not challenge it often enough. ■

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The war ends, sort of. The peace begins, sort of.

Winning Ugly

By LEON WIESELTIER

"THERE IS AN enormous opportunity to be seized here," Bill Clinton triumphantly declared in the East Room of the White House the day after Slobodan Milosevic seemed to have surrendered, "a chance to shift our focus from defeating something evil to building something good." His impatience for a lovelier reality is a fine American impatience, though it smacks also of the happy talk that is deforming the vocabulary of politics in America.

But evil is not so smoothly defeated and good is not so smoothly built. Evil is cunning, and clings to life. Clinton would like to be relieved of this war, as he would like to be relieved of the recalcitrance of the world in all its forms. For this reason, Milosevic's mischief in the wake of his acceptance of the peace plan for Kosovo—his attempt to introduce the United Nations into the conflict and then to exploit it in Kosovo as he exploited it in Bosnia, by dividing the command of the peacekeeping forces and by securing a Serbian zone in the north of Kosovo (where the churches and the mines are to be found) by means of Russian troops—is very clarifying. It should remind us that it is still too soon to "shift our focus." It will always be too soon to "shift our focus," as long as this slaughterer remains in power.

But the president is keen to "shift our focus," as he is keen to be done with this noble, halfhearted war. The fact that it is a just war matters less to Clinton than the fact that it is a war. He has found a way to wage a war in which Americans do not die, a lucky and cowardly war with precision technology that leaves polls and consciences unperturbed. If only a way could be found to wage a war in which Americans also do not kill! Then we could dream of victory *and* innocence. Clinton confessed in the East Room that he is "anxious to end the bombing," and this heaviness in his heart must be honored. It cannot be easy to order pilots into action over cities, even reluctantly. And yet, 35,000 sorties notwithstanding, this war has been prosecuted also with a certain lightness. There never was a moment in which politics gave way completely before strategy. The war's aims were defined in a manner that made the introduction of politically perilous tactics unnecessary. Milosevic's ethnic cleansers were not to be defeated on the ground. Milosevic was to remain in power. Apache helicopters were dispatched, but they were not to be used. And so on.

It is not that we did nothing. Quite the contrary. The United States and its allies did not allow the extermination of thousands of people and the expulsion of almost a million people to go unpunished. It may be that, as a consequence of Operation Allied Force, this savagely displaced population, or a large part of it, will find its way back home, though much of its home has been destroyed. To be sure, there is something preposterous about the notion that 50,000 Western troops will promptly "escort" 800,000 refugees back home and it will all be over; the peace plan is based to some extent on an illusion about the reversibility of history. It may also be, as a consequence of Operation Allied Force, that Milosevic's hold on power will be shaken, or even lost. But we know too much about how this war was fought, and how it was not fought, to pretend that it represents a moment of moral or military glory. Once again, Bill Clinton may accomplish something admirable in a manner that makes it impossible to admire him.

So is this a peace, or is it not a peace? At this writing, it is difficult to say. Milosevic is attempting to revise and to dilute the twelve points and a footnote to which he acceded. Still, a few early observations about the deal and its implications are possible.

{ HEROES AND ZEROES }

In the exciting hours between Milosevic's acceptance of the peace plan and Milosevic's interference with the peace plan, the view was everywhere that Operation Allied Force, by securing the Yugoslav commitment to withdraw from Kosovo and to repatriate the deported people of Kosovo, had retired the Powell Doctrine and rehabilitated the ideal of the flexible, calibrated use of military force. After all, it was only air power that brought Milosevic to the table. Those who had called for the deployment of ground troops suddenly looked foolish and even indifferent to the welfare of Americans in uniform. Some of them even apologized.

But a closer look at the events leading up to Milosevic's

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startling declaration to Martti Ahtisaari that "we accept your terms" provides a different account. It was *not* only air power that brought Milosevic to the table. Indeed, his behavior in the wake of the "breakthrough," which was when Milosevic really began to negotiate, demonstrates that he is perfectly willing to endure more bombing in the days or weeks or months that it will take for him to improve his diplomatic and military position. More importantly, there occurred a land battle in Kosovo in the last two weeks of May, and in this land battle the Yugoslav forces suffered heavy losses.

In the area around Mount Pastrik, near the Albanian border, the Kosovo Liberation Army (KLA) attacked Yugoslav forces, thereby flushing them out into the open, where NATO planes could attack them. The Pentagon boasts that 4,000 Yugoslav troops were killed and 6,000 Yugoslav troops were wounded. Whatever the numbers, the Serbs suffered a defeat. For Milosevic, the operational coordination between the KLA on the ground and NATO in the air was ominous. "There's only one reason why Milosevic caved in to NATO's demands after rejecting them for so long," a NATO diplomat told *The Washington Post*. "He realized he could not survive against the combination of attacks from the world's best aircraft and the Kosovo Liberation Army, which he personally revived through his crimes against their people." This KLA-NATO operation took place, moreover, amid more and more allied discussion of the deployment of ground troops. This discussion was ostensibly about the composition of a Western peacekeeping force; but the war-fighting capability of 50,000 Western soldiers was not lost on Milosevic.

So there was the momentous stirring of a land war, except that the soldiers were not our soldiers. Thus the American people could continue to believe, as a Pentagon official told *The New York Times* on May 16, that we are in "an age [of] zero-defects war." The American people may be right, but they are only temporarily right. This age of immunity will not last forever. Sooner or later the United States will have to send its soldiers to a place for which they were trained, a place where they will suffer injury or death. What will matter is whether the cause is just, not whether the cause is dangerous. But an outcome such as the outcome of Operation Allied Force allows the United States to think that military purposes may be accomplished without military sacrifices, and it allows the rest of the world to observe the United States lulling itself with such a belief. From such an American "victory," we may expect a weaker America.

{ *Mourir Pour Rambouillet*? }

The text of the Kosovo peace plan calls for a "political process directed at reaching interim political agreement which would secure essential autonomy for Kosovo, with full taking into consideration of the Rambouillet agreement, the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and other states in the region." It is one of the fundamental goals of the peace plan, and one of its fundamental concessions to Milosevic, that Kosovo be thwarted in its ambition for independence.

The Rambouillet agreement painted a more detailed picture of the autonomous future of Kosovo. "Kosovo shall govern itself democratically through the legislative, executive, judicial, and other organs and institutions specified herein ... [and] all authorities in Kosovo shall fully respect human rights, democracy, and the equality of citizens and national communities." But all those authorities are not Kosovar. The Federal Republic of Yugoslavia retains "competence in Kosovo" over "territorial integrity," defense, monetary policy, foreign policy, taxation, and other essential sectors of public administration. Within these circumscriptions, however, the Rambouillet agreement described the political institutions of autonomy: an assembly, a presidency, a judiciary, and arrangements for the preservation and the protection of "national communities" within Kosovo. The new agreement, by contrast, includes no such considerations.

There is also another feature of the Rambouillet construction of autonomy that is omitted from the new agreement. The constitution that was limned in the Rambouillet accord was called an "interim Constitution," because its structures were not designed to last more than three years. After three years, a referendum on the independence of Kosovo was to take place. Rambouillet did not deny the aspirations of the Kosovar Albanians. It only delayed their immediate realization. The incrementalism of Rambouillet very much resembled the incrementalism of Camp David and Oslo, which attempted to postpone the most explosive disagreements for last. But the new agreement for Kosovo does not defer the matter of Kosovar independence, and it does not deny it. It averts its gaze from it entirely.

FOR THIS REASON, the authorities in Belgrade have sought to portray the new agreement as an improvement on Rambouillet. In its report on the ratification of the Ahtisaari-Chernomyrdin-Talbott proposal on June 3, Tanjug, the official Yugoslav news agency, emphasized twice that "the document confirms the sovereignty and territorial integrity of our country." The Clinton administration, resentful of the suggestion that its war has concluded in nothing more than "Rambouillet minus," insists that the agnosticism of the accord on the question of Kosovar independence is diplomatically brilliant, since it allows anything to happen. Whatever the case, this much is certainly true: the Clinton administration and the Milosevic regime have always concurred that the territorial integrity of Yugoslavia is inviolable and the independence of Kosovo is inadmissible. Indeed, they seem to concur also in the view that the KLA is a threat to their preferred arrangements. The papers are full of American and NATO officials worrying about how troublesome the KLA will now become.

This is outrageous. In Yugoslavia, surely, and not only in Yugoslavia, "territorial integrity" is merely a euphemism for the repudiation of multiethnicity, for the imposition of the will of one group upon another group. And territorial integrity is not the only sort of integrity that matters. Why is the moral integrity of a state not to count in the reckoning of its territorial integrity? Moreover, the principles that justify

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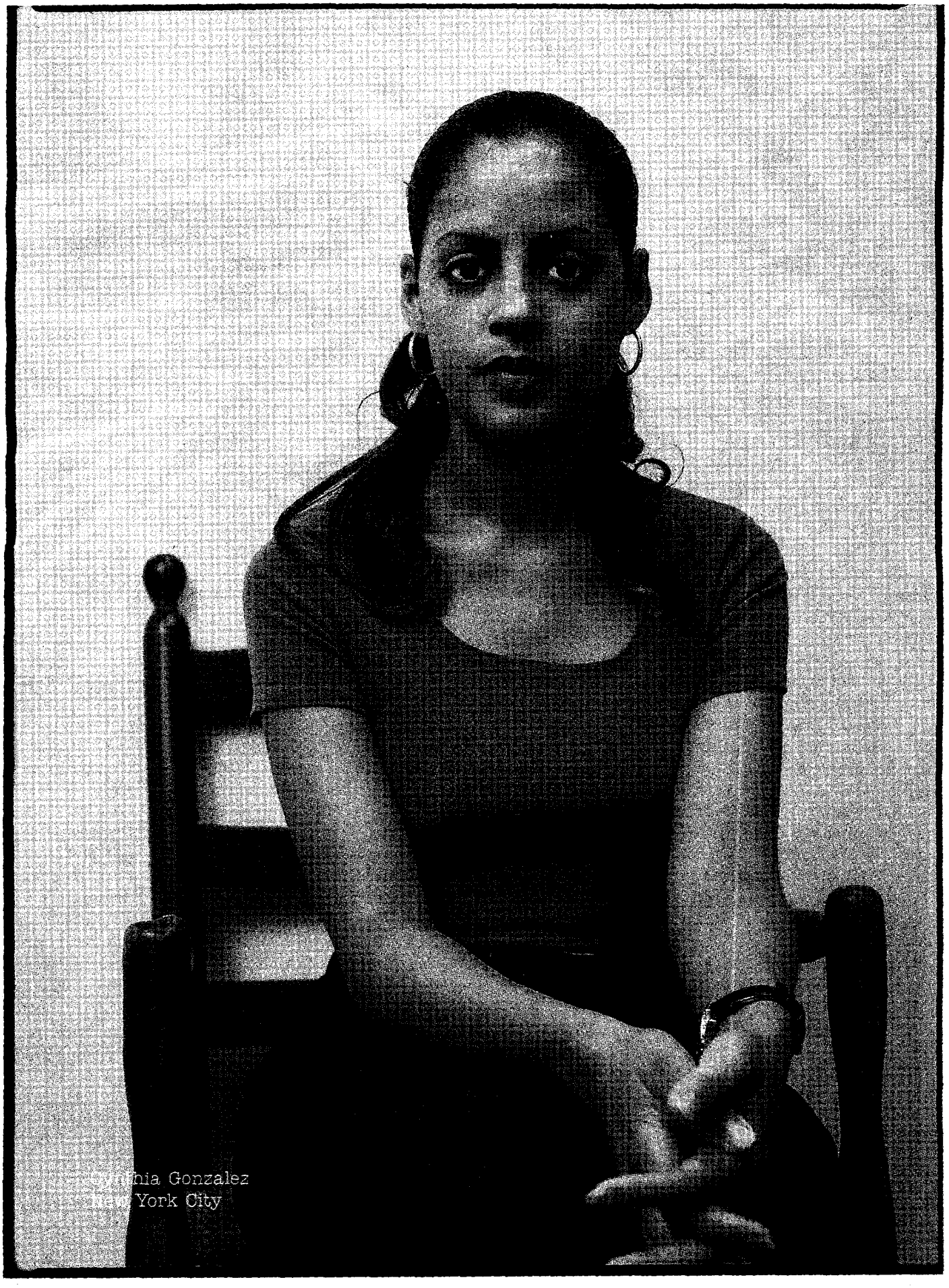

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autonomy also justify independence. "Human rights, democracy, and the equality of citizens and national communities," Rambouillet proclaimed. The Kosovar Albanians were 90 percent of the population of Kosovo before Milosevic tried to alter that fact by force. On what grounds, precisely, do we deny them the right to complete self-determination? (From the standpoint of law, certainly, they have the same right to independence as the other former members of the Yugoslav federation who have attained it.) And now that the horrors have taken place, does the administration really believe that the Kosovars should subordinate themselves again to the authors of those horrors? There is a tone of unreality about the new agreement. The "refugees" will go home, they will be autonomous, they will rebuild, all will be well. We were not trying to bomb Yugoslavia back into the Stone Age; we were trying to bomb Yugoslavia back into February.

For a Kosovar family that has just seen its loved ones beaten, raped, murdered, stripped of their legal identities, and exiled, February is no longer enough. Indeed, the dictator from whom the Kosovar Albanians are now supposed to accept autonomy gratefully owes his grip on power to his stripping Kosovo of autonomy in 1989. Out of the exterminations and the expulsions of the past few months, then, a Kosovar state surely deserves to arise. But this is not only a question of right. It is also a practical question. By refusing to recognize the legitimacy of the case for Kosovar independence, and by expecting the victims of Milosevic's vast atrocities to crawl back into Milosevic's kingdom, the new agreement guarantees its own undoing.

The resolution that the United States and its allies have put before the U.N. Security Council only garbles the matter. It seems to restore Rambouillet's more complicated and more equitable approach, calling for "the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo," and referring to the imminent arrangements for Kosovo as "an interim political framework"; but it does not mention the possibility of independence, and it reaffirms "the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia." This is a peace that is loath to acknowledge the proximate cause for the war.

{ Hitler, Shmitler }

The proximate cause is not the only cause. This war had also a final cause, and it, too, is left untreated by the Ahtisaari-Chernomyrdin-Talbott formula. If Kosovo is a burned parcel, and if almost a million people are living in tents along Kosovo's borders, and if Yugoslavia has a severely damaged society and economy, it is because there exists in Belgrade a regime that for a decade has visited ruination upon its region. The final cause of this war, and of the Balkan wars that preceded it, is Slobodan Milosevic. *He* is the problem, and we have once again left the problem in place.

Operation Allied Force has been conducted by an administration for which it is moral and legal to kill innocent people in Belgrade, but it is not moral and legal to kill the killer who rules them. (The assassination of Slobodan Milosevic would blaspheme the memory of Frank Church.) The realists of Washington like to remark that you can do many things in the Balkans without Milosevic, but the one thing that you cannot do in the Balkans without Milosevic is make peace. They do not add that he has been so indispensable for the making of peace because he has been so indispensable for the making of war. It is true that Milosevic had an unhappy childhood, as the media never tire of telling us, and Americans are disarmed by unhappy childhoods. American empathy is so promiscuous. But Milosevic has had his revenge. He has reproduced his unhappy childhood by *many, many thousands.* How much suffering does this miserable man have to cause before his removal—political development in Belgrade, let us call it—becomes our objective? (This is another reason to support the independence of Kosovo. Surely the loss of Kosovo would lead to the fall of Milosevic. The atavists of Serbia would never forgive him.)

No, he is not Hitler; but Hitler is a very high standard for evil. Anyway, it was Clinton who compared Milosevic to Hitler. "Do you think the Germans would have perpetrated the Holocaust on their own without Hitler?" the president asked on May 13. "Was there something in the history of the German race that made them do this?" Never mind that the Germans are not a race and that this is otherwise a very good question. The president's point was that "we've got to get straight about this. This is something political leaders do." From this it would seem proper to infer that political leaders of this variety should be removed. But Clinton made no such inference. Instead, he concluded that "if people make decisions to do these kinds of things, other people can make decisions to stop them." But what is the point of stopping them if they start again? What afflicts the Balkans are not the policies of Milosevic's regime but the nature of Milosevic's regime. In his ten years in power, he has practiced nothing but a tribalistic politics that avails itself regularly and remorselessly of the most odious forms of organized violence.

The really remarkable thing about Clinton's refusal to include the removal of this villain among his war aims is that he himself inherited the consequences of his predecessor's refusal to include the removal of another villain among his war aims. In 1991, half a million American soldiers were a few hundred kilometers away from Saddam Hussein, and George Bush did not order them to Baghdad. His generals feared casualties, and they had just concluded a zero-defects war of their own. They, too, adverted to the "territorial integrity" of Iraq, as if the misery that would result from the collapse of the state would be commensurate with the misery that had already resulted, to the Kurds in the north and the Shia in the south, from the survival of the state. And so Saddam was left to terrorize Iraq and to manufacture VX and to humiliate another American government. For a while, the Clinton administration appeared to consider an "overthrow strategy," but not for very long. We were said to lack the means, and the end seemed too nasty.

To date, then, the president of the United States has compared two American adversaries to Hitler and then learned to live with them. In the weeks preceding Milosevic's indictment as a war criminal, American officials went around attacking the prospect as "counterproductive." They

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worried that the indictment, which transposed the moral and historical truth about Milosevic into an instrument of law, would get in Chernomyrdin's and Talbott's way. Needless to say, it didn't.

{ The Withering Away of the State }

The war in Kosovo has provoked a strange outbreak of utopianism, when in truth it has been one of the most dystopian events in contemporary history. From the fact that the 19 countries of NATO used force against a state that was committing massive violations of human rights against people within its own borders, certain commentators have concluded that we are entering a new age of moral globalization, in which the nation-state and the idea of national sovereignty will be replaced by a more cosmopolitan consciousness of human responsibility and by supranational institutions of order and justice.

Writing about "Kosovo and the End of the Nation-state," Václav Havel has asserted that "there is every indication that the glory of the nation-state as the culmination of every national community's history, and its highest earthly value... has already passed its peak," because "human beings are more important than the state.... The state is a human creation [but] human beings are the creation of God." And he continued: "In the next century I believe that most states will begin to change from cultlike entities charged with emotion into far simpler and more civilized entities, into less powerful and more rational administrative units that will represent only one of the many complex and multi-leveled ways in which our planetary society is organized.... [The] condition toward which humanity will, and in the interests of its survival must, move will probably be characterized by a universal or global respect for human rights, by universal civic equality and the rule of law, and by a global civil society."

Jürgen Habermas, in an essay about Kosovo called "Bestiality and Humanity," has intuited a similar motion in history. *Von der Machtpolitik zur Weltbürgergesellschaft*, he calls it: from power politics to a society of world citizens. NATO's war against Milosevic's "mass crime" is just but "paternalistic," because it lacks "the legitimacy of acting in the framework of a democratic society of world citizens." For this reason, "the self-empowerment of NATO must not become the rule." Instead, he hopes that Operation Allied Force will be understood as "an armed peace-mission authorized by the community of peoples (even if it is lacking a United Nations mandate)," and that "the war in Kosovo could signify a leap from the path of the classical law of states to the cosmopolitan law of a world society of citizens."

Bronislaw Geremek observed at the NATO summit in April, which he attended as the foreign minister of Poland, that "this operation is the first signal of the coming century. In the twenty-first century, human rights will be the fundamental basis for defining international relations. Relations between states can no longer be founded on respect for sovereignty—they must be founded on respect for human rights." And Kofi Annan, for whom a *Weltbürgergesellschaft* already exists on the East River, skipped the philosophy and announced at the refugee camp in Brazde, on the Macedonian border, that "the Security Council should be the sole source of the legitimate use of force."

All this is millennial nonsense. We are not six months away from a finer world. Human beings certainly are more important than the state, but this casts no light on the legitimacy of the state. From the standpoint of God, which appears to be the standpoint from which Havel wishes to regard them, human beings are more important than *all* the institutions that they create, more important even than their own families. There is a difference, moreover, between the cult of the state and the legitimacy of the state. Many human creations are valid but not sacred. From the admonition that the state should not be worshiped, it does not follow that the state should be abolished; and from the admonition that the state is not the highest earthly value, it does not follow that it is no earthly value at all. Anyway, the highest earthly value should not be sought in political ideas or political institutions. If human beings are indeed created by God, then the thirst in their souls will be as little slaked by the "planetary society" as by the nation-state. Havel's post-totalitarian, post-Kosovo *oikoumene* is based on an eschatological conception of politics, and so it is a fantasy.

If the last decade has taught us anything, it has taught us that the bonds of group membership have not been weakened, let alone sundered, by "globalization." Quite the contrary. National, ethnic, religious, and tribal feeling is hardening against the threats (and the benefits) of economic and technological unification across borders. This is not always a bad thing, and it is not always a prelude to genocide. Indeed, communal affiliation and cultural affiliation, the mystic chords of memory, may serve also as a foundation for concerted action against the systematic abuse of human rights by governments or movements, within borders and across borders. The Western intervention in Kosovo owed something to the Western sense of responsibility for what transpires within the Western sphere. In this sense, the failure of the African states to intervene in Rwanda was even more disgraceful than the failure of the West to intervene in Rwanda.

"The poor of your town and the poor of another town: the poor of your town come first." This old rabbinical maxim nicely expresses the relationship of humanitarianism to communitarianism. The precedence that it advocates is not an ethnocentric expression. It is an expression of the practical dimension of moral responsibility. What people under attack should hope for salvation from "global civil society"? Will the "world society of citizens" raise an army to save anybody from extermination and expulsion?

It is certainly true that it is the nation-state from which we may expect such evils; but it is also the nation-state from which we may demand rescue from such evils. The ethical content of a particular sovereignty is what finally matters. The people of Kosovo owe a great deal to the nation-states of the United States, Great Britain, France, Germany, and the others. Without those sovereignties, and the respective monopolies of force that they stubbornly represent, the people of Kosovo would have been left to their doom. They almost were. ■

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Stanley Kauffmann on Films

Greek Gravity

THE GREEK FILMMAKER Theo Angelopoulos, now sixty-six, has had a rough road in this country. His reputation outside the United States is very high, but because his style is somewhat abstruse and his films lengthy, his work has not been widely shown here. Now another hazard threatens. His latest film, which won the Palme d'Or at last year's Cannes festival, is getting American theatrical release, and his difficulties here are unlikely to diminish. I've seen four of his ten previous features, and this latest work seems to crystallize his stylistic difficulties without providing as much reward as some of the others.

Eternity and a Day (Artistic License), at 132 minutes, is not the longest Angelopoulos film, but it is in the same adagio tempo as longer ones. This pace is so ruminative that we soon recognize it as a daring choice, not a slurring. He has always seen the camera as a dweller in the scene, affording us the chance to savor, rather than to transport us through adventure. The frequent comparison in this matter is of course with Antonioni, a comparison especially urged now because Angelopoulos's script collaborator was Tonino Guerra, who has often worked with Antonioni. But for me there is a clear difference between the two directors. In Antonioni, the intent of the adagio rhythm is to enlist time—the very passage of time—as a force in this enterprise, time as the alchemy that affects the psyches, the very chromosomes, of the people involved. With Angelopoulos, when the pace of a scene is slow, as it often is, I feel that he is encouraging us to invite parenthetical or footnoting thoughts about the scene—adjuncts that will enrich the material.

The film is shot in color, yet Angelopoulos brings in the color gradually by shooting the first sequences in shades of gray and white. After other colors enter, we realize that gray and white *are* the colors of the opening minutes. The place is northern Greece, in and around Thessaloniki, in the large seaside villa of a distinguished middle-aged poet named Alexandre. He is in the process of saying goodbye to his family, possibly a last goodbye, before he goes into hospital the next day. His affliction isn't named, but the references to the spread of a growth and his frequent need to take painkillers leave no doubt. As Alexandre moves from one person to another, as he visits his married daughter to leave his dog with her, he returns, again and again, to the past. (Usually, like the old man in Bergman's *Wild Strawberries*, he himself remains as he is now even when he's in a scene of long ago.)

The pathos of this farewell—the heightening by disease of one's constant awareness of mortality—is the only subject of the early sections. Then, when driving along in the town, Alexandre sees a bunch of boys, ten or twelve years old, being chased by men. Spontaneously, he invites one of the boys into his car and gives him a lift to safety. We don't know who the boy is or why he is being chased. (This is a recurrent Angelopoulos device. He posits mystery, as life does, to be clarified later.) Eventually we learn that the boys are illegal Albanian immigrants who are being caught to be sold secretly for adoption. At least, we assume it's for adoption.

Because of compassion, which awakens in him without any appeal by the boy himself, Alexandre takes charge of the boy, hoping to get him back across the Albanian border, two hours away. (This picture was made two years ago, so the topicality is accidental.) Alexandre's care of the boy, who sometimes is troublesome, is interwoven with his own problems; still, his concern for the boy brings the doomed man a renewed interest in life. At the end, the boy is well-bestowed, and Alexandre, though his physical condition is of course unchanged, has altered his immediate plans.

For the first third of *Eternity and a Day*, we are held by its gravity, not just by the fact of terminal illness, which is a familiar film device. This gravity is quickly realized through the performance of Alexandre by Bruno Ganz, the German actor for whom pensive and melancholy depths are *Heimat*. (Ganz spoke German in the film and is dubbed in Greek, which viewers who know neither German nor Greek would not know. In any case, Angelopoulos rarely shoots Ganz in close-up when speaking, and he often has him speak with his back to the camera.) The renewal of vitality in the poet, through the irruption of the boy into his life, is also a familiar trope, but this director and this actor make it true, not treacly.

Then, alas, as the film winds on, it becomes obtrusively poetic. What had been a realistic work, lyric but realistic, slides into ostentatious symbolism. The first sign of it is at the Albanian border, to which Alexandre has driven the boy. (But he doesn't leave the boy there.) It is winter. On the other side of the high wire fence, in a snowy field and misty light, are a number of men in fixed attitudes—frozen, we might think, until one of them moves. As this tableau appears, we can feel the film slip from direct, "felt" art into artiness. Ambiguous, too. What do these posed men signify? This arty vein persists; it's at its worst during a bus ride that the old man and the boy take later. At various times on this trip their fellow-passengers are: a young man who comes aboard, as a crowd roars behind him, carrying a huge red flag (and who soon falls asleep—presumably thus showing us how much we can depend on youthful revolutionaries); a poet in nineteenth-century dress whom we have glimpsed earlier and who exemplifies lost purity; and three musicians who play eighteenth-century music, symbolizing a lost perfection. The bus becomes a sort of medieval pageant wagon, bearing us to various spiritual states.

A less blatant factor, but equally unfortunate, is that the last half-hour is a lengthy series of conclusions. Four or five times in those thirty minutes we feel that this must be the closing shot, and it isn't. Alexandre moves on—to new versions of material that has already been addressed.

I wish that Angelopoulos's last film, *Ulysses' Gaze* (with Harvey Keitel), which was longer and seemed shorter, had been the one to breach American ignorance about him. But *Eternity and a Day*, with its Cannes prize, seemed to distributors the work with which to begin his American career. I hope it helps: he *is* an artist of power and integrity. But I confess that I remembered here what the English film critic Philip French wrote about an earlier Angelopoulos picture: "Seeing any ten minutes from this handsome movie's two-and-a-half-hour duration, you would think they came from a masterpiece." Then French, like me in this case, added his disappointment with the whole. ■

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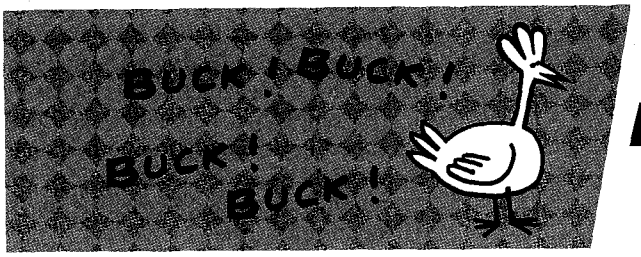

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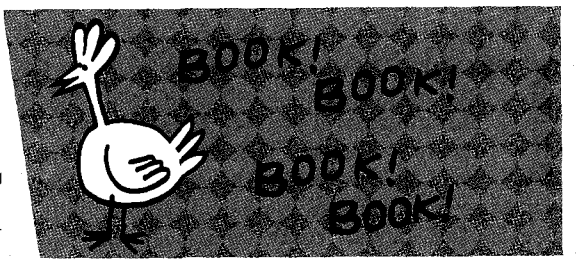

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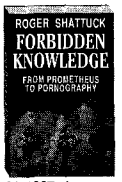

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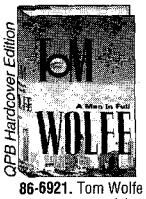

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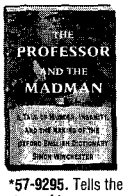

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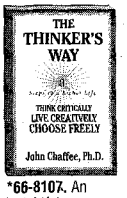

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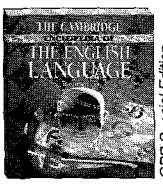

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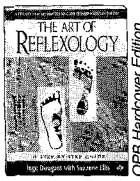

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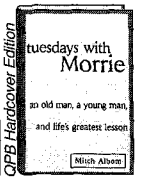

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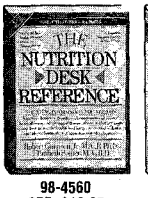

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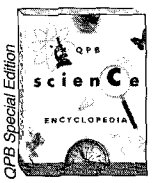

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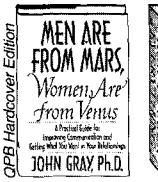

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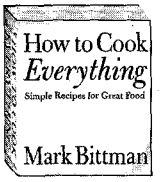

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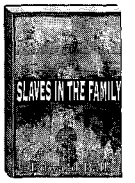

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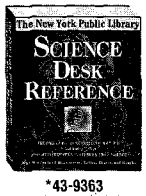

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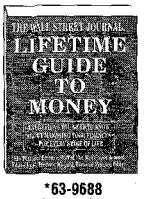

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Robert Brustein on Theater

Two Moral X-rays

TWO SHARP X-RAYS of social abscess and moral atrophy are currently playing in New York theaters. **Closer** (The Music Box) follows the purposeless sexual adventures of four London professionals. **This Is Our Youth** (Douglas Fairbanks Theater) focuses on the directionless lives of three young middle-class New Yorkers. Both demonstrate that playwrights can sometimes be among our most penetrating cultural historians.

The American play, written by the gifted Kenneth Lonergan, has a misleading title. Rather than being a cautionary sociological study of wayward teenagers, *This Is Our Youth* is a tough-minded, almost clinical examination of the aimlessness, the vacuity, and the emotional deadness of a trio of privileged kids in their twenties. Set in 1982, at the beginning of the Reagan era, the play takes place in the West Side studio apartment of Dennis Ziegler (Mark Rosenthal), who is discovered lying in an unmade bed, surrounded by newspapers and magazines strewn carelessly around the floor. His dazed eyes are fixed upon an Abbott and Costello movie.

The apartment is a gift from his parents, out of gratitude for the fact that he has no desire to live with them. Dennis has festooned the place with recruitment posters and basketball trivia. Into this squalid den comes another figure estranged from his parents, Warren Straub (Mark Ruffalo), a zonked-out airhead wearing a parka and backpack. Following a fight with his father, Warren has fled the house with $15,000 of his dad's ill-gotten gains. These two characters, both of them wholly concerned with sex, drugs, and rock and roll, resemble the kind of affectless druggies usually played in the movies by Robert Downey Jr. Indeed, the action of the play revolves around a burgeoning cocaine deal that begins to acquire some of the intensity of the quest for the Holy Grail.

Warren seems at first to be slightly brain-dead—restless, easily bored, always asking "What's up?"—but the closer we get to him, the more sharply focused he becomes. He clearly has "an advanced talent for misery." His sister has been murdered in California for no apparent reason. His father has no use for him. And he is always breaking things or knocking them over—most calamitously for him, the hefty stash of coke that he has managed to obtain from a pusher with his father's money. His other major passions are for "retro" objects such as toasters manufactured in the 1960s and a Wrigley Field Opening Day baseball cap, though he seems to have a little feeling for a young woman named Jessica Goldman (Missy Yager), who has come to the apartment to share his bag of blow. After an awkward bit of foreplay, he books a room in the Plaza Hotel ("I happen to be extremely liquid at the moment"), where the two manage a perfunctory kind of sexual consummation.

As for Dennis, his rich mother is a big-city social worker, "a bleeding-heart dominatrix," devoted to installing swimming pools for the poor and lording her liberal sentiments over the rich husband who supports her. His offstage girlfriend Valerie is a sculptress, one of whose pieces—two lesbians making out—is carelessly smashed by the hapless Warren, thus leading to a major fight between her and Dennis. The two young men move in and out of their various sexual relationships with the same bored indifference they bring to their sense of the future. Dennis contemplates maybe going to cooking school in Venice, or maybe "I'll totally direct movies (get the best actors in the world and let them improvise)." Warren will probably return to his parents with what is left of the stolen money.

These are young people with no belief in themselves, and even less faith in their hypocritical parents or their disillusioned peers. For them, Reagan's America is populated with people once passionately eager to change the face of civilization, who eventually said, "You know what? Maybe I'll just be a lawyer." What gives these creatures some life is their personal style, perfectly captured by the director, Mark Brokaw, and by the three actors, particularly Mark Ruffalo, his brows knitted, his shoulders hunched, a carpenter ant trying to disappear into the woodwork. Although the play sometimes reproduces the drug-dazed atmosphere of David Rabe's *Hurlyburly*, it also reminded me of *Ivanov*. The male characters have the same flabby characteristics, the same elegiac sense of loss as Chekhov's superfluous man. Kenneth Lonergan's capacity to evoke these qualities without moralizing about them is the mark of a significant writer.

Patrick Marber is an even more exciting young talent. His *Closer* is the most interesting new English play I have seen since Pinter's *Betrayal*, a work it somewhat resembles. Indeed, as an anatomy of adultery, *Closer* may be even more impressive. It is certainly a more compassionate piece of theater—Pinter with heart, however bitter at the root. As both a writer and a director, and with the aid of a fine, functional design by Vicki Mortimer and a score by Paddy Cunneen that sounds like modern Bach, Marber has composed a piece of music himself, a classical string quartet in which the various players keep exchanging their parts and their instruments.

Put another way, *Closer* is a contemporary version of *Les Liaisons Dangereuses*, where the four lovers, though less predatory than those of Choderlos de Laclos, are equally obsessed with erotic conquest and immediate gratification. Throughout the play, Alice, a young striptease *artiste*, Dan, a would-be novelist reduced to writing obituaries, Larry, a dermatologist, and Anna, a photographer, keep moving in and out of each other's lives with the regularity of commuter trains picking up passengers at a station. These characters change partners as if they were the only four people in the world, satisfying their compulsive sexual needs with very little restraint, though with occasional pangs of conscience.

At times, this process becomes extremely manipulative. A justly celebrated scene in the play shows Dan online, pretending to be a woman, exchanging hot sex talk with Larry in an Internet chat room (their hilarious typed messages are projected onto a screen). Pretending to be Anna, Dan entices Larry into a rendezvous with her at the Aquarium, a meeting that eventually leads to their marriage. Sex-obsessed, these characters are also, most of them, obsessed with the truth. Larry informs Anna that he visited a whore in New York. "Why did you tell me?" she asks. "Because I love you," he replies. Anna, in turn, informs Larry that she's leaving him for Dan. It's not enough for Larry to learn she's betrayed him. He has to know all the details. "Is he a good fuck?... Better than me?" ("Gentler," she replies.) Later, it is not enough for Dan

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to hear Anna admit that she went to bed with her ex-husband. He also has to know the details. "Did you enjoy it?" "Did you come?" "Did you fake it?" "Do you fake it with me?" *Closer* is extremely explicit about the rituals of sexual transactions, and extremely provocative in the way it demonstrates how for some people the act of cuckoldry can itself be a form of erotic pleasure.

If the absolute value among these people is honesty, their prime mover is not love but lust. The characters try to trick out their infidelities with romantic inventions, but these are easily exposed. "Stupid expression. 'I fell in love,'" muses Alice, when Dan says he's leaving her for Anna. "As if you had no choice.... You didn't fall in love. You gave in to temptation." Toward the end, she sadly concludes, "They spend a lifetime fucking and they never learn how to make love." *Closer* explores the vanishing line between conscience and temptation, treating adultery like some unmanageable habit, similar to smoking. Smoking, in fact, is the play's parallel metaphor. Those able to kick the habit are the ones most likely to be faithful. But don't count on it.

The major victim of these amoral sexual exchanges is Alice, the only one who has managed to give up smoking. Returning to her old profession after having been abandoned by Dan, she is visited by Larry, who stuffs her stockings with money in the hope of getting her to sleep with him. But although she is willing to show him every orifice of her body, she will not, at first, let him use her for his purposes. Significantly, she is the only character who is not passionate about veracity. ("Lying," she says, "is the most fun a girl can have without taking her clothes off.") Finding her again, Dan demands that she tell him the truth about her relations with Larry, "because I'm addicted to it, because without it we are animals." She doesn't want to lie, but she can't tell the truth. Forced to admit that she had relations with Larry, she sacrifices what is left of her identity ("I'm no one"), confesses to Dan that she no longer loves him, and spits in his face.

It is because she is unable to live with truth that Alice commits suicide. At the end, it is revealed that she has been living the most spectacular lie of all, having taken her name and her biography off a memorial tablet belonging to someone else. The three survivors gather around her fake memorial at the end permeated by an enormous sense of remorse.

Memorial blocks constitute the backdrop of the set—a design that gradually accumulates all the scenic pieces used in the play, as if these four lives were a detritus of props and furniture. Marber's

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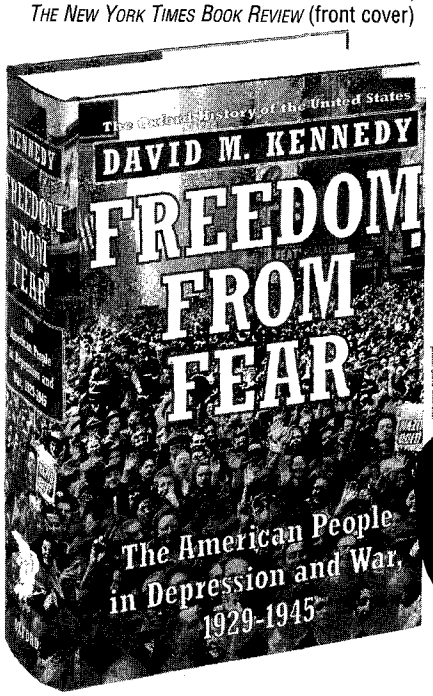
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writing is reinforced by his stagecraft, his remarkable sense of space and time, and especially his impeccable cast: Natasha Richardson's cool and reserved Anna; Rupert Graves's anguished, driven Dan; Anna Friel's plucky if vulnerable Alice; and Ciaran Hinds's authoritative, somewhat barky Larry.

From the 1930s to the 1960s, the theater was usually much more explicit about sex than the movies, a medium forced to ban four-letter words and to limit lovemaking to a chaste kiss before a fade-out. Following Bertolucci's breakthrough in *Last Tango in Paris*, the movies became so sexually explicit they made the theater look priggish by contrast. One of the virtues of *Closer* is the way it prods the stage into joining the sexual revolution. The play tells us more about the tragic consequences of this revolution than almost any other work I know. ■

The Writer and the Preacher

By JAMES WOOD

Juneteenth
by Ralph Ellison
edited by John F. Callahan

(Random House, 368 pp., $25)

JUNETEENTH IS A lavish disappointment, a false sunset. It closes the permanent summer of Ralph Ellison's literary career with a "second novel" that is neither second nor a novel, and veils in faded colors the bright, remembered perfections of *Invisible Man*. It is, in some respects, a commercial echo, bounced by publisher and executor off the resonance of that earlier great book, and not approved or overseen by the author. It is hard to imagine that Ralph Ellison would be anything but disappointed by the publication of a three-hundred-and-fifty-page sampler taken from the two thousand or more pages he left behind, and on which he worked for forty years; and hard to imagine that he would be not be disappointed by the idea of this little pretender joining, and permanently modifying, the sealed dynasty that was his oeuvre until this moment of publication.

Yet even as an extract *Juneteenth* is disappointing, and so one is unsure whom to be disappointed by, Ellison or his editor John Callahan. Does it fail because it is an extract, or fail despite its extraction? The book has moments of magnificence, and throughout, one feels the presence of Ellison's moral intelligence, his refined lucidity, his ambition and clean sensibility. But as a "novel" it barely exists: it is technically unconvincing, its premises are unearned, its scenes bleed into one another. It palpably lacks its own hinterland—presumably the hundreds of pages that were to prepare and follow this strand in Ellison's epic plan. Yet, painful to say, even as a passage of writing it is frequently flawed: it is too often homiletic, sentimental, and rhetorical.

The original decision to publish a polished paring from Ellison's posthumous writings rather than the whole rough torso seems a mistake; but within that decision, John Callahan's idea of taking a single, developed story is surely bold and right. Callahan tells us that Ellison's project was vast. Possibly it had become unrealizable, a many-eyed attempt to see the entirety of American society, and to narrate most of the American history of this century—the dance of what he called, in *Invisible Man*, "the beautiful absurdity" of American identity.

The action of *Juneteenth*, says Callahan, lay at the heart of Ellison's epic. It is certainly a beautifully ambitious conception. A bigoted, race-baiting senator, Adam Sunraider, is shot on the floor of the Senate, while giving a speech. In the audience is the Reverend Alonzo Hickman, a large, gentle, noble Southern preacher who has been trying for some days without success to meet Senator Sunraider. But the wounded senator, now on his deathbed, calls for Hickman, and the two men begin a conversation which fills the rest of the book. As he is forced to remember his childhood, we learn that the light-skinned senator has been passing for a white man. In fact he is black, or partially black, and was brought up by Hickman, his guardian. As a child, the senator was known as Bliss; Hickman gave him the name as a tribute to the murkiness of his parental origins: ignorance is bliss.

Bliss was raised in an entirely black world, and from an early age had been a successful child-preacher. He and Hickman had a revival-meeting routine, in which Bliss hid in a coffin, and, on hearing Hickman say the words "Suffer the little children to come unto me," would rise up out of the box and cry "Lord, why hast thou forsaken me?" At other meetings, Bliss acted as Hickman's prompter, standing on the other side of the stage and feeding him faux-naïve questions: "So please, sir, tell us just how we came to be here in our present condition and in this land.... Was it an act of God, Rev. Hickman, or an act of man?"

Bliss was a great hope for Hickman. In working notes for his novel, some of which Callahan wisely prints at the end of *Juneteenth*, Ellison wrote that "Bliss symbolizes for Hickman an American solution as well as a religious possibility. Hickman thinks of Negroes as the embodiment of American democratic promises, as the last who are fated to become the first, the downtrodden who shall be exalted." But Bliss dirtied that hope by running away from Hickman, moving North, taking a new name, and burying all traces of his black childhood. In the bedside exchange that constitutes the book that we now have, Hickman forces Bliss to recall what he has determined to forget. Sometimes, wrote Ellison in 1969 when an excerpt was published, the two men "actually converse, sometimes the dialogue is illusory and occurs in the isolation of their individual minds, but through it all it is antiphonal in form and an anguished attempt to arrive at the true shape and substance of a sundered past and its meaning."

It must be admitted that this is a somewhat melodramatic, somewhat artificial situation at best—the enforced memory-dredge of the dying man, the coaxing presence of the visitor; but the effect is much more severe when we are denied a novel's proper preparation. Since *Juneteenth* is an extract, we are bowled straight into the concerns and lives of these characters, whose necessity is simply assumed. We peer in at an encounter that is clearly important for the protagonists, but only waveringly so for us; it is at times as if we were reading an old weather forecast. It takes only thirty pages for Bliss to be shot, and then he is in bed, the victim of the position that he will maintain until the end of the book. The book offers no other mode of action. Thus what should seem the blessed result of an accident—the

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two men thrown together by the extremity of the shooting—becomes, within the offered extract, a founding device. The encounter becomes a kind of diplomatic gift, something we must accept in order to oil the wheels of process. Naturally, as a device, the reader resents it a little. The effect is a bit Broadwayish, as if we had settled into our seats and opened the program of a second-rate play to find: "Scene: 1955. A hospital room. Bliss, the senator, has been shot and lies in bed. Also present: Hickman, the Baptist preacher. No intermission."

This is a technical problem exaggerated by *Juneteenth*'s isolation from its narrative family. But in fact the whole book is a technical problem, founded by Ellison's decision to surrender most of his narrative to memory and antiphony, and compounded by the decision to distill and to publish it. There is a quality of wish-fulfillment about the narrative—the race-baiting senator who is actually black—that is always in danger of coarsening Ellison's delicate humanism. The book never quite relinquishes its air of *instruction*—the re-education of Bliss, and thus, in part, of the reader as well. Bliss always "symbolizes for Hickman an American solution as well as a religious possibility," and symbolizes the same for Ellison, too.

The artificiality of the situation means that the two protagonists find themselves in the peculiar position of having to remind each other of what they would already know. At one moment, Hickman forces Bliss to remember the seven-day revival meeting that was held around the nineteenth of June (the Juneteenth of the title). "You remember what it was, don't you?" Hickman demands of Bliss:

> "The occasion? It was another revival, wasn't it?"
>
> "Course, it was a revival, Bliss—but it was Juneteenth too. We were celebrating Emancipation and thanking God. Remember, it went on for seven days."
>
> "*Juneteenth*," the Senator said, "I had forgotten the word."
>
> "You've forgotten lots of important things from those days, Bliss."
>
> "I suppose so, but to learn some of the things I've learned I had to forget some others. Do you still call it 'Juneteenth,' Revern' Hickman? Is it still celebrated?"
>
> Hickman looked at him with widened eyes, leaning forward as he grasped the arms of the chair. "Do we still? Why, I should say we do. You don't think that because you left.... Both, Bliss. Because we haven't forgot what it means. Even if sometimes folks try to make us believe it never happened or that it was a mistake that it ever did...."

Too much of the book proceeds by means of this kind of sentimental homily, a redundancy of exhortation. Because the two men are exclusively involved in reclaiming the past, reclamation becomes the book's chief mode of narration. And because most of that narration occurs within the heads of the protagonists, they are often forced to tell the reader things that should properly be left to the writer. Sitting in the Senate, just before the shooting, watching Bliss giving a speech at the beginning of the book, Hickman says to himself: "Lord, what a country this is. Even his name's not his own. Made himself from the ground up, you might say. But why this mixed-up way and all this sneering at us who never did more than wish him well? Why this craziness.... Ah, but the glory of that baby boy. I could never forget it and that's why we had to hurry here. He has to be seen, and I'm the one to see him. I don't know how we're going to do it, but soon's this is over we have to find a way to get to him." No one would actually think like this. This seems to exist for the reader.

This is a misuse of stream-of-consciousness, whose characteristic is to alight on apparently accidental details—a random reclamation of the past. The entire difficulty with *Juneteenth* is that its situation is a programmatic reclamation, but that the technique of random reclamation is used for this programmatic task. The novelistic arts of memory—stream-of-consciousness, dream, reverie—are marched into a purposiveness that should belong to a third-person author, not to that author's characters. As a result, Bliss and Hickman rarely seem quite free. Hortatory and sermonizing, they are articles of allegory paradoxically created by a marvelous novelist in the process of defying his own novelistic freedom: an allegorist and a realist are at battle with each other.

To be fair, all novelists bully a little when using their characters to reclaim their pasts ("And suddenly he remembered that..."). Memory is undramatic, in this sense, because it is backward narration, storytelling in reverse, the forced "discovery" of something that has supposedly already happened and that therefore cannot really be "discovered." But Ellison makes such reclamation the exercise, the necessity, the allegory of the book itself. This may explain why his two protagonists speak to each other almost entirely in tones of exhortation, and not as actual humans would. Hickman too often reminds Bliss of the importance of the

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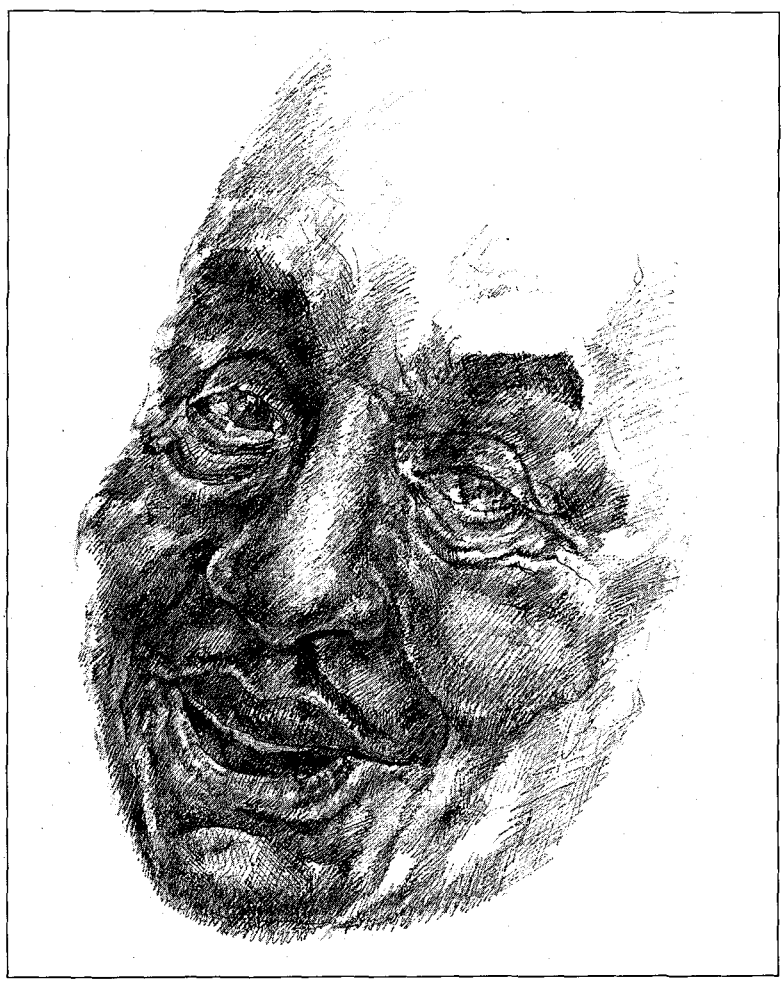
reclamation itself: "Time is just like Eatmore used to say, a merry-go-round within a merry-go-round; only people fall off or out of time.... But time turns, Bliss, and remembering helps us to save ourselves. Somewhere through all the falseness and the forgetting there is something solid and good."

"Remembering helps us to save ourselves." Readers who recall the power and the subtlety of *Invisible Man* will be able to judge for themselves what a diminishment this kind of writing represents. Yet all of Ellison's work in some ways was a struggle between allegory and realism, a struggle that tended to resolve itself in the creation of a super-realism, a phantasmagorical accuracy. In an interview with James Alan McPherson, Ellison described the style of his second novel-in-progress as "a realism extended beyond realism." But this is also the style of *Invisible Man*, which allows for the insertion of speeches and sermons from various characters, and for exquisite essayistic addresses made by the narrator himself. The combination of the allegorical and the realistic was part of that novel's blended strength. Characters such as the novel's narrator, the principal of the college, Dr. Bledsoe, the blind preacher Homer A. Barbee, the mistress of the boarding house, Mary Rambo, and the charismatic leader Ras the Exhorter have a pleasing fullness and individuation; but they also perform a function as archetypes in a mythic narrative of death and rebirth. The narrator is an Underground Man, who, famously, speaks for us on the lower frequencies. In the process of his folkloric journey out of darkness into light, from the South to the North, he encounters various mythical figures of African American life: the assimilationist educator, the exhortatory preacher, the warm Southern Mother, the urban activist. (Ellison was quite explicit about the mythic underpinning of his novel.) The narrator passes through, and in turn rejects, the ritual postures of black citizenship as they are presented to him: cowed assimilationism, religious consolation, militant Africanism, the radical politics of communist Brotherhood. The narrator emerges, as Ellison once described Twain's Jim, "like all men, ambiguous, limited in circumstance but not in possibility."

This is the great beauty of *Invisible Man*, that it is a kind of *Bildungsroman* in reverse, in which the hero instructs himself in the great truth that he will not be instructed. Each lesson ends in a failed test. The novel offers an education in freedom, one arrived at negatively, through the discarding of borrowed clothes. The narrator must be his own nudity. He is housed in the negative; literally, because he has become invisible and because he lives underground. His task will be to make something of his abandoned freedom, to squeeze the air for its invisible atoms and make shape from them. Ellison's novel, in this regard, may not be as "affirmative" or as nicely liberal as it was taken to be (by Irving Howe and others). The narrator wobbles on a pregnable pivot; he can go either way. What the novel allows—and in this respect it contrasts sharply with the extract offered by *Juneteenth*—is a story of education that confounds its own educative pattern. The narrator of *Invisible Man* is certainly being instructed by Ellison, but it is an instruction in unraveling. The book can therefore award itself a kind of impossible programmatic freedom, a balancing of the didactic and the random, of the allegorical and the realistic. *Invisible Man* is a realistic allegory. *Juneteenth*, alas, which insists on an affirmative reclamation of the past in order to educate its characters, is too often a real allegory.

"The function, the psychology, of artistic selectivity is to eliminate from an art form all those elements of experience which contain no compelling significance," wrote Ellison in 1945, in his essay "Richard Wright's Blues." Even there, at such a young age, we can see the imminent tensions, fruitfully resolved in his first novel and painfully distinct in his second, between allegory and realism, between necessity and freedom. The realist, one might say, wants to flood the novel with detail that may seem insignificant, but that flows into one river of significance: the realist will always err in favor of insignificant abundance. The allegorist, however, wants a symbolic diet, a thinning of the inessential: the allegorist errs in favor of significant emaciation.

The result of this war may well be Ellison's greatest technical problem and anxiety: the challenge of transitions. Even in *Invisible Man*, the book tends to move from great scene to great scene. Ellison told interviewers that he felt that the novel failed in its ability to effect that movement. He was more anxious still about his inability to connect the disparate material that he was gathering for his second novel. When asked how the book was coming on, he often joked that he was "working on the transitions"—or rather, this was taken as a joke. In an interview published in *The Paris Review* in 1955, he spoke of how he used "the ritual understructure of the fiction" to help "guide the creation of characters." Then he continued: "The problem for me is to get from A to B to C. My anxiety about transitions greatly prolonged the writing of my book. The naturalists stick to case histories and sociology and are willing to compete with the camera and the tape recorder.



Ralph Ellison by David Schorr for The New Republic

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I despise concreteness in writing, but when reality is deranged in fiction, one must worry about the seams." His creative practice perhaps did not help: he tended to keep writing scenes that were going well, endlessly extending the favored material, "riffing," a word people like to link with the blues but which, as Ellison surely knew, Melville used about his own ecstatic extensions.

Ellison's anxieties were not misplaced, for once the allegorist and the realist are fighting with each other, the problem of "transitions" becomes *the* problem, both technical and moral. Transition becomes the problem of how to make form at once free and significant, of how to make characters both necessary and free, essential and accidental. The transitions are what will appear "insignificant." In *Juneteenth*, again in both the technical and the moral sense, there are no transitions. There is only a march of necessities, from scene to scene. The characters are never really free; but because they are never really free they are never quite necessary either: the two parts of the dilemma need each other's fertilization. Part of this lack has to do with the form of the book's presentation. But it seems possible that this is a widespread affliction in the rest of Ellison's posthumous writings, that the massiveness and the massive nobility of the project caused a toppling, and a dumbfounding of the novelistic in favor of the epically allegorical.

JUNETEENTH IS A *lesson* in the complexity of American identity, as *Invisible Man* was a quest for the same. Identity, of course, was Ellison's dear, gnarled subject. Much influenced by Kenneth Burke's writing on ritual and myth, he had absorbed Burke's contention in *Attitudes Toward History* that identity is the central literary problem. Burke was interested in the friction of individuality and collectivity, as was Ellison for his own personal reasons. (Ellison used to quote Du Bois's complaint that the black community was like a basket of crabs: as soon as one crab tried to get out, the rest pulled him back in.) "How much of one's past identity must be forgotten, how much remolded, as he moves from one role to the next?" asked Burke of modern man. "The nature of our society is such that we are prevented from knowing who we are," added Ellison. For Ellison, this problem of self-knowledge was also a problem of other-knowledge, the recognition of whites and blacks that they contain each other.

It is the fine theme of *Juneteenth*. The difficulty is that the two men engaged in this discussion of identity are not themselves identities—not individual identities, at least. To be fair, Bliss, when remembering his childhood, has the beginnings of a specificity. We read about his obsession with his white mother, his first visit to the movies and to the circus. The circus scene is a superb example of the power of Ellison's writing when the allegorical and the realistic are working together. Bliss watches a little clown in blackface being cartoonishly assaulted by a number of white clowns. The audience, including Hickman, is laughing. But Bliss, who notices that the clown is the same size as him, cannot laugh. He cannot understand why the clown always runs from his attackers, and does not turn "and see what he can knock out of them." Then Bliss asks Hickman if the clown is black, and Hickman explains that he is not. But the boy is still unappeased. The scene finely renders, with psychological acuity, a moment of charged allegorical import. Elsewhere we read of the little boy's dread of the coffin-routine, and we are introduced to his world of preaching. Ellison reproduces many pages of the kind of sermons and routines the little boy suffered through, feeding Hickman his lines:

> "What a crime! Tell us why, Rev. Hickman...."
>
> "It was a crime, Rev. Bliss, brothers and sisters, like the fall of proud Lucifer from Paradise."
>
> "But why, Daddy Hickman? You have taught us of the progressive younger generation to ask why. So we want to know how come it was a crime?"
>
> "Because, Rev. Bliss, this was a country dedicated to the principles of Almighty God. That *Mayflower* boat that you hear so much about Thanksgiving Day was a *Christian* ship—amen!...."
>
> "They made our Lord shed tears!"
>
> "Amen! Rev. Bliss, amen."

There are too many pages of this, too many pages of narrative as exhortation. Ellison was probably aware of it. In one of his working notes, he writes: "The thing to remember about the antiphony between Daddy Hickman and little Bliss is that the two are building a scene within a scene and it must be on a borderline between the folk poetry and religious rhetoric." That borderline is thin, indeed, and only creates another thin borderline between rhetoric and description. In *Invisible Man*, Ellison subtly undermined the solemnity of the affirmation in the speeches and the sermons that he reproduced. In *Invisible Man*, for instance, the Reverend Homer Barbee is blind, and the narrator remarks on his extreme ugliness. This information ironically qualifies his blazing, omniscient sermon. But the sermons in *Juneteenth* lack that saving skep-

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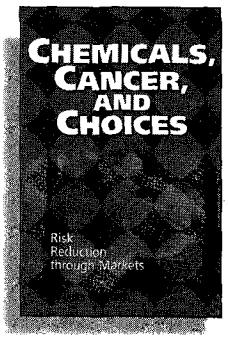

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ticism; even if this were not Ellison's intention, their effect is to drive the book onward in affirmation and edification.

Hickman is the obstacle. Were he as difficult and obscure as Bliss, the antiphony between the two men might escape the instructive. But Hickman is a walking homily. He is a noble educator, and his memories always tend to the general. He is, as it were, Rasselas in a dark suit. Late in the book, he reflects on Bliss's refusal to acknowledge his origins, and praises himself for the simplicity of his function: he hasn't, he says to himself, "asked anything except that he [Bliss] remember and honor the days of his youth." But precisely the simplicity of his function is his grave defect as a fictional character. He is no more than a lecturer in anagnorisis, and a folksy one at that: "Well, I'm a man and like a man I made my mistakes.... Come on now, we might as well talk this out right here because it's important. Anything you hold in your heart after so long a time is important," he tells Bliss, who is his unwilling captive in the hospital bed.

HICKMAN TALKS LIKE a preacher's manual. Perhaps this is Ellison's subtle criticism of Hickman? It is difficult to think so on the evidence supplied. "We had mourned and rejoiced and rejoiced and moaned and he had released the pure agony and raised it to the sky," he tells Bliss about one of their fellow-preachers. "So I had to give them transcendence. Wasn't anything left to do but shift to a higher gear. I had to go beyond the singing and the shouting and reach into the territory of the pure unblemished Word. I had to climb up there where fire is so hot it's ice, and ice so cold it burns like fire."

Elsewhere, Hickman delivers himself of folksy opinions about the difference between white and black mothers:

> I tell you, Bliss, when it comes to chillun, women just ain't gentlemen, and the fight between her kind of women and ours goes way back to the beginning. Back, I guess, to when women found that the only way they could turn over the responsibility of raising a child to another woman was to turn over some of the child's love and affection along with it. They been battling ever since. One trying to figure out how to get out of the work without dividing up the affection, and the other trying to hold on to all that weight of care and those cords of emotion and love for which they figure no wages can ever pay. Because while some women work and others don't, to a woman a baby is a baby. She ain't rational about it, way down deep she ain't.

Hickman also delivers homilies about America:

> The first thing you have to understand is that this is a strange country. There's no logic to it or to its ways. In fact, it's been half-crazy from the beginning and it's got so many crazy crooks and turns and blind alleys in it, that half the time a man can't tell where he is or who he is. To tell the truth, Bliss, he can't tell reason from *un*reason and it's so mixed up and confused that if we tried to straighten it out right this minute, half the folks out there running around the world would have to be locked up. You following me, Bliss?

UNFORTUNATELY, WE ARE following Hickman only too well. One suspects that Ellison does not want Hickman to seem windy, but noble. In a note, he wrote that "there is mysticism involved in his [Hickman's] hope for the boy, and an attempt to transcend the hopelessness of racism.... This involves bringing up the child in love and dedication in the hope that properly raised and trained the child's color and features, his inner substance and his appearance would make it possible for him to enter into the wider affairs of the nation and work toward the betterment of his people and the moral health of the nation." But now, alas, Ellison is sounding like a more formal Hickman.

It is the strangest paradox that Ellison, the careful aesthete, the individualist, would seem to be, in the creation of Hickman, the servant of a generalized noble politics. The nobility of the thought here is unquestioned; but no fictional character can fully exist so comparably unquestioned. Hickman resembles the truly good allegorical figure in *Invisible Man*, Mary Rambo, the woman from the South who runs the Harlem boarding house where the narrator stays. Her function is to provide succor and food, to represent the moral anchor of a lost port, the South. "She was something more," says the narrator, "a force, a stable, familiar force like something out of my past."

The difficulty is that figures of mythic comfort such as Hickman and Mary Rambo are generalized, not individual. (This was a difficulty in Toni Morrison's *Paradise*, which also veered between allegory and realism.) They are baptized in a common stream. For certain works of literature, this archetypicality may not matter, but it will prove a genuine difficulty in a novel that contains powerful elements of realism, as this one does. More acutely, generalized archetype poses a problem for a novel that seeks to discuss precisely the ratio of individuality and collectivity in American identity. Quite apart from the boredom of Hickman's homilies, it seems pedagogically weak that the man who is coaxing from Bliss his specific memories, his dreads and confusions, his white man's recoil from the black world and the sources of that recoil, should be so persistently converting that reclaimed individuality into the terms of the general, the tribal, the mythical. Far from challenging Bliss with the wickedness of his adult denials, Hickman seems, to the reader at least, to give good grounds for Bliss's recoil. It would be a point of honor to resist such a maxim-machine, and run far away.

AFFIRMATION OF THE kind that Hickman teaches and symbolizes is not certain death for a novel, but it menaces it. One can think of optimistic or affirmative novels, but most of them—*Middlemarch* or *The Rainbow* or *Howards End*—describe a crescent of failure around an imagined affirmation. *Invisible Man* belongs to this tradition. The enactment of affirmation—the *success* of affirmation—is always the difficulty for novels. Since affirmation is hypothetical or utopian, it lacks specificity; since it lacks specificity, it lacks drama; since it lacks drama, it will tend to the didactic and the general, and its spokesmen are likely to be propagandists. Hickman is such a man, and we are not surprised when he ends the novel dreaming a peroration to himself: "Because this American cloth, the human cloth, is woven too fine for that, that's why. Because you are one of the few who knows where the cry of pain and anguish is still echoing and sounding over all that bloodletting and killing that set you free to set yourself free, that's why again. Because you know that we were born of sacrifice, and that we have had to live by a different truth and that that truth is good and the vision of manhood it stands for is more human, more desirable, more real." This is a flight from the novelistic.

As Hickman leans on the narrative, so an earnest cloud floats over the book, and the weather becomes monochrome. A noble allegory rains down, a kind of religion, and perhaps it is no accident that the management of the novel's education should become so misguidedly religious when it is turned over to the control of a preacher. One misses, by contrast, the secular irreverence of *Invisible Man*, the crowded combinations of Manhattan life in that book, and one recalls wistfully the scene, both realistic and symbolic, both painful and funny, in which the narrator stands in front of a yam stall in New York. Eating the delicious yam, he is suddenly homesick for the South. "I yam what I am," he says. ■

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Why judges owe us an account of their reasons.

The Age of Mixed Results

By JEFFREY ROSEN

One Case at a Time: Judicial Minimalism on the Supreme Court by Cass R. Sunstein

(Harvard University Press, 290 pp., $29.95)

I.

AMERICA NOW IS a society addicted to legalism that has lost its faith in legal argument. The impeachment of Bill Clinton was only the most visible manifestation of this paradox. Both Democrats and Republicans professed a rhetorical commitment to the rule of law while revealing a deep pessimism about the ability of courts, legislatures, or even citizens to transcend their biases and to converge, through deliberation, on impartial and democratically acceptable outcomes. The simplistic Supreme Court decisions that precipitated the impeachment—in particular *Morrison* v. *Olson*, upholding the Independent Counsel law, and *Jones* v. *Clinton*, denying the president temporary immunity from civil suits while in office—were based on the principle that the president should not be above the law, a principle repeatedly invoked by both parties in the House and the Senate; but the content of the Congressional deliberations revealed an unsettling cynicism about the malleability of legal argument. Both sides embraced interpretive methodologies that they had rejected on previous occasions, as the president's accusers praised the virtues of a living Constitution while the president's defenders insisted on the importance of original understanding. Perhaps most jarringly, after declining to engage each other's arguments, the two parties in the House and the Senate divided more or less on party lines. The partisan character of the votes on the articles of impeachment seemed to reinforce the partisan character of law itself.

There is nothing new, of course, about the notion that judges and jurors often find it hard to transcend their own biases, and that courts should hesitate, for this reason, to usurp the decisions of the democratically accountable political branches. This has been the refrain of political and academic critics of the Warren Court since the 1950s, and it has now transformed our legal culture. But then something odd happened. At the very moment that judges began to agree about the virtues of deference to the political branches, legal scholars began to wonder whether the political branches deserve all that much deference after all.

Public choice theory called into question the claim that self-interested legislators were well equipped to reflect the will of the majority. The New Chicago School of Social Norms pointed to the ways in which norms can influence behavior more effectively than law, and to the ways in which norms and law can influence each other, sometimes perversely. Critical race theory and feminist theory insisted that objective truth is unknowable because we are all prisoners of racially, sexually, and economically determined perspectives that can never be transcended through reasoned deliberation. (And contemporary pragmatists added to the rampantly subjectivist atmosphere.) Scholars of the popular initiative process pointed to the ways in which initiatives can be captured by well-financed special interest groups, rather than reflecting popular will. And an explosion of federal lawmaking during the past decade raised questions about whether Congress deserved deference because of its purported ability to transcend factionalism, as it federalized great patches of regulatory authority, often for the cheapest symbolic reasons, that had previously been left to the states.

The new skepticism about the relationship between majoritarianism and democracy poses a daunting challenge for constitutional theorists. Which lawmaking authority deserves deference in an age that has lost its confidence in the deliberative powers not only of the courts, but also of the political branches and the people themselves? This is the challenge that Cass R. Sunstein sets out to answer. With his new book, Sunstein joins a distinguished line of liberal constitutional theorists who have defended the democratic value of judicial modesty. Although some of his earlier work had embraced less diffident visions of constitutional interpretation, he now places himself squarely in the tradition of Felix Frankfurter and his disciple Alexander Bickel, who famously advocated the "passive virtues" of declining to decide cases in certain circumstances so as to promote democratic debate. Sunstein's prescription is more comprehensive than Bickel's, which makes it uniquely well-suited to an age that has lost its constitutional faith.

Like the Unitarian who believes that there is at most one God, Sunstein urges the Supreme Court to be self-mortifying about the limits of its knowledge. It should refuse to decide certain cases, and agree to decide other cases as narrowly as possible, so as to preserve spaces for contested issues to be debated democratically. But Sunstein's interpretive approach, which he calls "judicial minimalism," is not a recipe for deference to the people and their representatives in all circumstances. Although minimalists "disfavor broad rules that would draw a range of democratically enacted legislation in question," Sunstein writes, they "are not committed to majority rule in all contexts. Majoritarianism is itself a form of maximalism." Sunstein argues for a jurisprudence of mixed results, counseling courts to strike down laws in some circumstances and to uphold them in others, but always to be guided by what he calls "democracy-promoting minimalism."

It is rare that a work of constitutional theory so precisely expresses, and so enthusiastically celebrates, the mood of a particular Supreme Court. For nearly forty years, politicians and legal scholars have focused on different responses to the perceived over-expansiveness and lack of humility that characterized the Warren

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Court. The great constitutional theorists of the previous generation, from Alexander Bickel to John Hart Ely, displayed a critical tone toward the justices of their era that combined theoretical dismay with barely concealed contempt. Sunstein, by contrast, is Whiggish in every way. He has warm praise for "several of the justices, most notably O'Connor (but also Justices Breyer, Ginsburg, Stevens, and Souter), [who] are cautious about broad rulings and ambitious pronouncements. Usually, they like to decide cases on the narrowest possible grounds." Sunstein contrasts these heroes with the villains of his story, Justices Scalia and Thomas and Chief Justice Rehnquist, who "think that it is important for the Court to lay down clear, bright-line rules, producing stability and clarity in the law." No other scholar has captured the temper of the current majority as neatly as Sunstein, nor has anyone else attempted to provide a theoretical justification for what other observers took to be ad-hockery or improvisation. For these reasons, Sunstein's book deserves close attention.

II.

SUNSTEIN WANTS TO reformulate the terms of constitutional debate by focusing on minimalism and maximalism rather than on activism and restraint. Judicial restraint is a notoriously imprecise term. It can include a range of deferential judicial behavior, from deference to legislatures to deference to constitutional text or history or precedent, all of which may point in very different directions. The justices that Sunstein criticizes as well as those that he praises have identified themselves at various times as acolytes of judicial restraint, but it is hard to consider the Rehnquist Court as a whole to be a restrained Court. Although it is less willing than its predecessors to create and to expand broad rights of personal autonomy—as demonstrated by its refusal to recognize a sweeping right to die—the Rehnquist Court is far more willing to strike down federal statutes as violations of federalism or the separation of powers. (In its 1997 term alone, it struck down four federal laws; and when it invalidated the line-item veto last year, its attitude toward Congress could only be called cavalier.) Sunstein recognizes that the most distinctive quality of the Rehnquist Court is not its commitment to restraint but its aversion to philosophy and to ambitious theorizing, its preference for saying as little as possible, its instinct for consensus rather than confrontation (a surprising number of important opinions are unanimous), its proclivity for handing down bold rulings without bothering to agree on very deep reasons to explain its decisions.

Is this aversion to deep reason-giving something to be celebrated, as Sunstein suggests, or is it a form of judicial self-aggrandizement masquerading as modesty? Sunstein models his theory on Bickel's "passive virtues," which Bickel defined as the use of techniques of judicial avoidance to delay decisions in important cases that might be further clarified by democratic debate. But for the justices to extend Bickel's notion of "passive virtues" to a judicial opinion itself, refusing to say what they think about a constitutional issue after they have promised to do so, is a peculiarly coy vision of the judicial role. It seems not so much passive as passive-aggressive. Sunstein persuasively argues that the most effective judicial decisions are those that preempt democratic deliberation as little as possible, but it is hard to see how citizens can deliberate meaningfully about constitutional issues when the Court refuses to share its own views about the rules of debate.

THE FUNDAMENTAL characteristic of judicial minimalism, as Sunstein defines it, is a commitment to leaving important questions unresolved. As Sunstein puts it:

> A minimalist court settles the case before it, but it leaves many things undecided. It is alert to the existence of reasonable disagreement in a heterogeneous society. It knows that there is much that it does not know; it is intensely aware of its own limitations. It seeks to decide cases on narrow grounds. It avoids clear rules and final resolutions. Alert to the problem of unanticipated consequences, it sees itself as part of a system of democratic deliberation; it attempts to promote the democratic ideals of participation, deliberation, and responsiveness. It allows continued space for democratic reflection from Congress and the states. It wants to accommodate new judgments about facts and values. To the extent that it can, it seeks to provide rulings that can attract support from people with diverse theoretical commitments.

Encouraging judges to preserve space for democratic deliberation, Sunstein provides a series of distinctions. First, he argues that minimalist decisions should be narrow rather than broad—that is, minimalist justices should try to decide the case at hand without laying down a sweeping rule that will bind lower courts and legislatures in similar cases. By refusing to tie the hands of the political branches and the lower courts, Sunstein argues, the Supreme Court can preserve space for democratic disagreement.

And Sunstein further argues that minimalist decisions should be shallow rather than deep. They should lay down a rule in the case at hand without giving an ambitious theoretical account of their reasons for doing so. By avoiding foundational questions, and converging on "incompletely theorized agreements," courts can "make it unnecessary for people to agree when agreement is impossible," again preserving space for democratic debate.

As an example of a decision that is narrow and deep, Sunstein points to the Virginia Military Institute case, where the Court struck down the all-male admissions policy at VMI on the grounds that the Constitution prohibits gender-based stereotypes, while refusing to say whether or not single-sex education was or was not constitutional in other circumstances. As an example of a narrow but shallow decision, he points to *Romer* v. *Evans*, where the Court invalidated an anti-gay rights amendment in Colorado without clearly explaining why it was doing so or what it thought about different forms of discrimination based on sexual orientation. (I am not sure that I have ever read another book in which "narrow" and "shallow" are terms of praise.) Sunstein contrasts these decisions with the decisions of the Warren Court that he considers wide and deep, such as *Brown* v. *Board of Education*, invalidating school segregation, and *Reynolds* v. *Simms*, declaring the constitutional principle of one-man-one-vote; and with a wide and shallow decision such as *Roe* v. *Wade*, which struck down abortion restrictions in almost all circumstances without giving an intelligible reason why it was doing so.

SUNSTEIN'S MATRIX OF categories is certainly provocative, but it seems just as malleable as the categories of activism and restraint that it wishes to usurp. Whether a decision is characterized as narrow or shallow, or deep or broad, seems entirely in the eye of the beholder. Sunstein lists *Brown* as an example of a wide and deep opinion, but it might just as well be seen as a narrow and shallow one. After all, the Court declared segregation in public schools unconstitutional without explaining very clearly why it was doing so, and without saying anything about the constitutionality of different forms of state-sponsored segregation (on public transportation, for example). The indeterminacy of Sunstein's categories calls their broader utility into question.

Read as a shallow decision, moreover, *Brown* is a good example of the chaos that

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can result when the Supreme Court refuses to lay down clear and easily understood rules. The result of the Court's refusal to explain whether its reasoning extended beyond schools was to create confusion in the lower courts and legislatures, which, in the years following *Brown*, were deeply divided about the constitutionality of segregation in public swimming pools, golf courses, and other public facilities. In a series of terse and unanimous opinions, unaccompanied by any reasons at all, the Supreme Court extended the narrow holding of *Brown*, striking down each of these further examples of public segregation one by one, but again without articulating a clear principle to justify its decisions.

OWING TO THE unreasoned quality of *Brown*, moreover, supporters of segregation were able to exploit its logical flaws. In 1963, for example, a Southern judge held a trial about the empirical validity of Kenneth Clark's studies of the self-esteem of African American children, as reflected in their reaction to white and black dolls. If, instead of focusing on the "feeling of inferiority" that segregation provoked in black children, the Court had issued an opinion that was genuinely deep—holding, say, that all state-sponsored racial segregation is unconstitutional because it is inherently caste-affirming—then lower courts and legislatures might have been less quick, in the wake of *Brown*, to take advantage of loopholes in the Court's terse commands, such as the requirement to implement desegregation "with all deliberate speed."

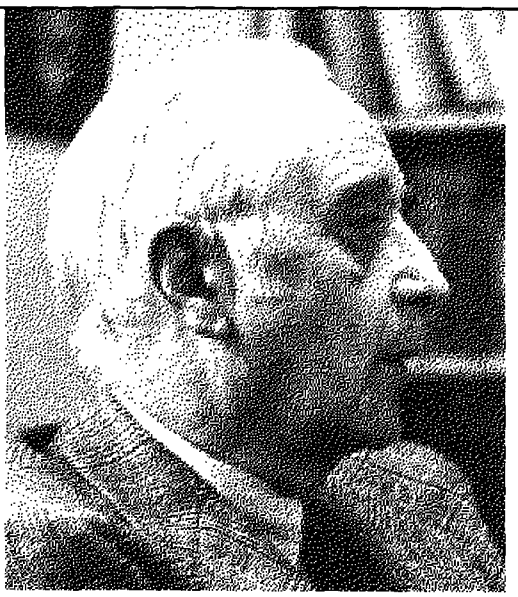
It is possible, of course, that no matter how broadly or deeply the *Brown* opinion had been written, it would have provoked the same resistance from segregationists and the same support from integrationists. In his pathbreaking study *The Hollow Hope*, Gerald Rosenberg has suggested that the *Brown* decision had little influence on the immediate progress of desegregation in America; it was not until political opinion against segregation had congealed during the civil rights movement of the 1960s that the public sphere was integrated in a meaningful way. If Rosenberg's thesis is correct, as Sunstein notes, then *Brown* might actually be seen not as a maximalist decision at all, but a "form of democracy-promoting minimalism," opening a dialogue with the political branches that remained unsettled for more than a decade. Yet Sunstein presents no empirical evidence about the degree to which legislatures or citizens may respond differently to shallow as opposed to deep decisions, and so it is hard to say with confidence whether or not a deep opinion can, in fact, provoke more democratic deliberation than an opaque one or a shallow one can.

Since the subset of lawyers who regularly read Supreme Court opinions after they have graduated from law school is tiny, and the subset of non-lawyers who read Supreme Court opinions at any point in their lives is far smaller, it would not be surprising if the shallowness or the depth of an opinion has little influence on the degree to which it influences political debate. (Most citizens get their knowledge of Supreme Court opinions from television, which suggests that Sunstein's central premise that the courts can participate in an informed dialogue with citizens may be idealistic.) Yet shallow opinions seem especially unlikely to provoke reasoned deliberation, because they give citizens and legislators so little to deliberate about, except to try to predict the future votes of the justices who produced them. Sunstein's strongest point about *Brown* is that it represented the culmination of decades of incremental victories in the lower courts; and that the Supreme Court would do well, in cases involving social issues about which there is profound division, to follow the opinions of lower courts and citizens rather than to lead them. Yet this is an argument for delaying important decisions, not for refusing to give coherent reasons in cases that the Court has finally agreed to decide.

III.

IF THE SUPREME COURT were the only court in the nation, it might be able to embrace a highly personalized, "the law is what we say it is" jurisprudence, without worrying about giving very clear reasons for why it is doing so, and without tipping its hand about how it is likely to decide similar cases in the future. In the American system, however, the Supreme Court sits at the top of a pyramid of inferior federal courts, all of which are bound to apply its decisions uniformly throughout the nation. And lower courts, when faced with a narrow, shallow Supreme Court decision of the kind that Sunstein praises, may literally be at a loss about what the opinion means. This is more likely to promote chaos than reasoned deliberation.

Sunstein acknowledges that minimalism may shift the burden of making hard decisions from the Supreme Court to lower courts: "A court that economizes on decision costs for itself may in the process 'export' decision costs to other people, including litigants and judges in subsequent cases who must give content to the law," he writes. For this reason, he stresses that when "planning" by lower courts and



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citizens is important, minimalism may be inappropriate. But isn't "planning" important in every case that the Supreme Court agrees to hear? In an age in which the Supreme Court is deciding fewer and fewer cases, and selecting the handful of cases that it agrees to hear by looking for areas of disagreement among the lower courts, it seems inefficient and even irresponsible for the justices to refuse to lay down clear rules in the few cases in which they have promised to do so.

Surely it is hard to argue that the legal questions in these cases would benefit from further debate in the lower courts, since it is the existence of vigorous disagreement in the lower courts that led the Supreme Court to agree to hear the case in the first place. When the Supreme Court issues terse opinions whose reasoning is hard to discern, it compounds the confusion of inferior courts in precisely those cases where the relevant actors are pleading for a clear resolution. The result is a national exercise in clairvoyance, as lower courts, citizens, and legislatures spend great energy and expense trying to puzzle through problems that the Supreme Court promised but then refused to resolve.

BY EMBRACING SHALLOWNESS as a judicial virtue, Sunstein is advocating a version of the personalized jurisprudence of Sandra Day O'Connor; but O'Connorism is hardly a recipe for rich public debate. Consider the Voting Rights cases. In a series of opinions beginning with *Shaw* v. *Reno* in 1993, O'Connor has cast tie-breaking votes to strike down a series of voting districts constructed on the basis of race. At the same time, O'Connor has taken care to stress that not all majority-minority districts are unconstitutional—going so far in one case as to write a separate concurrence to her own opinion that seemed to deny its logical implications.

Since O'Connor has refused to reveal the rules or the standards that, in her view, distinguish constitutional from unconstitutional districts, the process of redistricting in the wake of the 1990 census has largely become a exercise in trying to read Justice O'Connor's mind. This has dramatically increased her power, but it has wreaked havoc on electoral maps across the country. Far from promoting reasoned deliberation, O'Connorism promotes its antithesis, entangling individual justices in the political process to the most minute and confusing degree. Justice Potter Stewart's famous test for obscenity—"I know it when I see it"—was based on the conviction that there was a social consensus about what is obscene, but that it reflected too many legal and moral permutations to be captured in a single judicial rule. O'Connor's focus on "oddly shaped districts" is far more self-aggrandizing, because it rests on no broader aesthetic than the sensibility of the individual justice herself.

Sunstein recognizes the democratic virtues of deep opinions as opposed to shallow ones—they help to promote the rule of law, by limiting judicial discretion and improving predictability—but still he defends shallow decisions, on the grounds that they permit citizens with "diverse theoretical commitments" to converge around outcomes when they are unable to converge around abstract principles. Yet the voting rights experiment calls even that modest claim into question. An incompletely theorized case such as *Shaw* v. *Reno* gives citizens no basis for knowing what, precisely, they are being asked to accept, beyond the unsatisfying claim that a voting district is unconstitutional if Justice O'Connor thinks it is. The broad and deep decisions of the Warren Court obviously thwarted democracy, by forbidding the legislature from acting in all sorts of spheres. But O'Connor's minimalism thwarts democracy in a different way: by personalizing constitutional interpretation in a way that is hardly consistent with reasoned argument.

THE RIGHT-TO-DIE cases offer another example of the hazards of O'Connorism. In 1997, all nine justices agreed that the Constitution does not protect an open-ended right to physician-assisted suicide in all circumstances. But the Court divided sharply on the question of whether a competent person experiencing great pain might have the right to hasten his imminent death. Four justices, led by Chief Justice Rehnquist, would have left this question entirely up to the representatives and the citizens of the states. In what Sunstein calls an "ambitious, emphatically nonminimalist opinion," Rehnquist would limit the Court's discretion to recognize new fundamental rights under the due process clause of the Constitution to those rights that are deeply rooted in longstanding traditions and practices.

But why is Rehnquist's opinion "emphatically nonminimalist"? The conventional tools of legal interpretation—text, history, tradition, constitutional structure, and judicial precedent—all fail to support the claim that there is a fundamental right to physician-assisted suicide, even to alleviate great pain when death is imminent. By recognizing the weakness of the argument for a judicially created right to die, and by removing the courts from the debate entirely, Rehnquist's approach would seem to preserve the largest space for democratic deliberation.

Yet Sunstein prefers the far more elusive approach of Justice O'Connor, who stressed that the Court had not decided whether or not a competent person experiencing great suffering might have a constitutional right to control the circumstances of imminent death. "O'Connor's opinion speaks for a group of justices who are not quite clear on how to handle fundamental rights under the due process clause and who want to leave the hardest and most contested issues for continuing democratic, and judicial, debate," Sunstein writes. But O'Connor characteristically gave no hints about what sort of constitutional arguments might persuade her to decide this question one way or another, and so it is impossible to say whether or not she was justified in refusing to tip her hand.

IF O'CONNOR IS waiting for further facts to illuminate some aspect of the constitutional debate, then her hesitation might be justified. In his own separate opinion, Justice Souter suggests that more empirical evidence, especially about the experience of the Netherlands, might cast light on the question of whether the line between assisted suicide and voluntary or involuntary euthanasia could become "porous" if the Court were to recognize a limited right to die for terminally ill people who are experiencing great pain. Still, empirical evidence is not the end of the matter. It may illuminate whether or not the state has a sufficiently strong interest in guarding against medical mistakes to override a fundamental right of terminally ill patients to end their suffering, but it casts little light on the question of whether or not the right exists in the first place. That is a question of judicial philosophy, of argument and interpretation.

Sunstein, like O'Connor, says that the Court should assume that the right to physician-assisted suicide is "presumptively protected" in medically hopeless cases, but should also hold that the state's interests are sufficiently strong to override it. Why is this opaque holding more "minimalist" than Rehnquist's far less intrusive alternative? Since neither Sunstein nor O'Connor explains the reasons that might persuade the Court to recognize a presumptive right to die under medically hopeless conditions, all this has the feel of a fiat, and it raises the specter that the Court might create other unenumerated rights in the future with similarly thin support in text, history, and precedent. Wasn't it precisely this threat of an untethered court inventing constitutional rights without coherent explanations that the minimalist project was designed to avoid? Sunstein stresses

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that "there is a big difference between a refusal to give an ambitious argument for an outcome and a refusal to give any reasons at all," but the opinions that he praises sometimes seem to verge on reasonlessness in their refusal to reveal what the justices could be thinking.

In a powerful article called "Judges as Advicegivers," which appeared in the *Stanford Law Review* in 1998, Neal Katyal argues that the best way for courts to achieve Sunstein's goal—avoiding interference with the political branches and encouraging legislators to settle constitutional issues politically rather than judicially—is to write narrow but deep opinions. That is, opinions explaining their carefully confined holdings with a generous reliance upon dicta, or non-binding advice, that provide clear guidance to legislators and citizens about the reasons and the assumptions behind a decision. The narrowness of the holding would ensure that democratic prerogatives are preserved across a range of issues, and the clear advice would permit the political branches to make informed decisions about the constitutional limits on their powers, rather than trying to read judicial tea leaves.

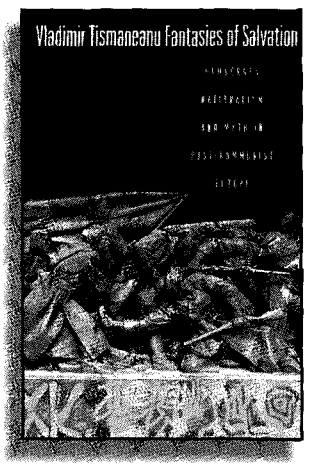
Thus Katyal argues, about *Clinton* v. *Jones*, that the Court could have written a narrow opinion siding with Jones rather than a hyperbolic opinion declaring that text and history provide "no substantial support" for claims of presidential immunity. After acknowledging the closeness and uncertainty of the question, he continues, the Court could have declined to create the presidential immunity that Clinton requested, on the grounds that a constitutional solution to the problem would freeze the manner permanently. But the opinion could have included clarifying dicta, informing Congress about the potential constitutional problems, and strongly suggesting that a legislative grant of immunity would be the most appropriate way to address them.

With characteristic fair-mindedness, Sunstein acknowledges the arguments for judicial depth. By refusing to give intelligible reasons for their decisions, he notes, justices run the risk that litigants in similar cases will not receive equal treatment by lower courts. The main objection that he raises to a deep decision is that "judges may not be good at ambitious theorizing, and may hence blunder—a special problem when they are invalidating legislation." Still, it is not clear that judges are any better at less ambitious theorizing, which may require a subtlety and a complexity that more abstract arguments do not require. Consider the Court's opinion in *Romer* v. *Evans*, the case striking down Colorado's anti-gay rights amendment. Justice Kennedy's opinion for the Court, Sunstein suggests, is narrow and shallow, cobbling together clashing theories without explaining very clearly the relationship between them. The most dramatic silence in the opinion is its failure to address the fate of *Bowers* v. *Hardwick*, the decision a decade earlier that had upheld a Georgia anti-sodomy statute.

The most shallow way to read Kennedy's opinion is to say that *Romer* and *Bowers* can co-exist side by side. Even assuming, for the sake of argument, that it is permissible for a state to ban sodomy, so as to discourage conduct that citizens think is immoral, Kennedy seemed to suggest that prohibiting gays and lesbians from bringing any "claim of discrimination" against the state of Colorado was not a rational way of discouraging homosexual conduct. The sheer breadth of the amendment, as Kennedy put it, "seems inexplicable by anything but animus toward the class it effects." Under this shallow reading of Kennedy's opinion, the Constitution permits citizens to express their moral disapproval of homosexual behavior, as long as they do so rationally.

Sunstein acknowledges that Kennedy's opinion might be read in this limited way, but he rejects the shallow reading in favor of a deeper one. In Sunstein's view, Kennedy's opinion stands for the more ambitious proposition that the equal protection clause of the Constitution "requires that discrimination must be rational in the sense that it must be connected with a legitimate public purpose, rather than fear and prejudice or a bare desire to state public opposition to homosexuality as such." If the *Romer* Court had indeed embraced this plausible but deep principle, then the decision would seem to call into question not only the anti-gay rights amendment passed by the citizens of Colorado but also most laws expressing moral disapproval of homosexual behavior, including the ban on same-sex marriages. Sunstein acknowledges this possibility, but then he says that judges should resist the temptation to invalidate the ban on same-sex marriage, even if they believe that it violates the Constitution, because such a decision could "galvanize opposition," "weaken the antidiscrimination movement," "provoke more hostility and even violence against homosexuals" and "jeopardize the authority of the judiciary."

This exaltation of prudence over principle resurrects the vices of Frankfurterism. In the years after the Court decided *Brown* v. *Board of Education*, Frankfurter urged the Court to avoid hearing cases that



Fantasies of Salvation

Democracy, Nationalism, and Myth in Post-Communist Europe

Vladimir Tismaneanu

Eastern Europe has become an ideological battleground since the collapse of the Soviet Union. Here a leading observer of post-Communist Europe shows that extreme nationalistic and authoritarian thought has been influential in Eastern Europe for much of this century, while liberalism has shallow historical roots. It would be a mistake for the West to assume that liberalism will always triumph.

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would force it to strike down anti-miscegenation laws, on the grounds that such a decision would be fiercely resisted in the South. Yet there is no convincing evidence that *Loving* v. *Virginia*, the decision that finally did strike down anti-miscegenation laws in 1968, would have been much more fiercely resisted if it had been handed down five years earlier; and it is hard to think of a good reason, aside from the self-protective instincts of the judiciary, for refusing to apply a constitutional principle to a similar case that it clearly encompasses. Sunstein rejects the notion that it is "too pragmatic and strategic, too obtusely unprincipled" for judges to exalt prudence over principle in highly controversial cases that are likely to provoke popular resistance; but since he fails to tell us what he thinks about the wisdom of deferring a decision in the miscegenation cases, or about the timing and substance of many other landmarks of the Warren era, it is hard to say whether his theory has more general application, or whether it is contrived for a particular group of justices at a particular time.

IV.

As the contrast between the gay rights opinion and the voting rights opinion shows, deep opinions may be as likely to preempt democracy as shallow ones, though for different reasons. This is a wrinkle that Sunstein's analysis is perfectly able to accommodate: he argues convincingly that the case for shallowness or depth may vary depending on the context in which a particular constitutional issue is being debated in the democratic sphere. A more fundamental criticism of Sunstein's judicial minimalism is that, when push comes to shove, he does not really trust democracy at all. He is committed to deliberation in the abstract, but he is willing to override the judgments of the actual citizens in actual debates when they do not coincide with his own intuitions about what a deliberative democracy should embrace. Democracy, Sunstein stresses repeatedly, should not be confused with simple majoritarianism: "There is a large difference between democracy, properly understood, and whatever it is that a certain majority has chosen to do at a certain time." But at times the outcomes that Sunstein is willing to credit as genuinely "deliberative," as opposed to "naked preferences" supported by "power but not reasons," look surprisingly like the outcomes with which Sunstein happens to agree.

Consider affirmative action. "I start with the suggestion that the issue of affirmative action should be settled democratically, not judicially," Sunstein writes. He then praises the Supreme Court's "meandering course, its refusal to issue rules, its minimalism" in the affirmative action cases, which "might be defended as performing a valuable *catalytic* function ... to spur, but not to preempt, effective public debate." All this is entirely plausible. At the moment, the Court is closely divided between two wide, deep, and mutually inconsistent readings of the constitutional guarantee of equality. Four justices—Scalia, Thomas, Rehnquist, and a little more tentatively Kennedy—seem to believe that affirmative action is unconstitutional in nearly all circumstances because the constitution is color-blind. Four justices—Stevens, Souter, Ginsburg, and Breyer—seem committed to the principle that affirmative action is permissible in most circumstances because the constitution prohibits only racial classifications that promote racial castes. Sandra Day O'Connor, naturally, has not made up her mind.

The court's inability to muster five votes for one alternative over the other has resulted in a series of fragmented opinions that have indeed provoked, as Sunstein suggests, a useful debate about the permissible scope of affirmative action in the public sphere. The affirmative action cases show O'Connorism at its most galvanizing: by offering a series of narrow and shallow distinctions—affirmative action may be permissible in universities but not in federal contracting; diversity is a more important goal in the classroom than on federal highway projects—the Court has provoked legislators and citizens to debate a complicated topic in sophisticated ways.

The most important of these debates took place in California and culminated in Proposition 209, which was adopted by the citizens of California on November 5, 1996. It says that "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting." One would have expected Sunstein to praise Proposition 209 as a democratic settlement of our most hotly contested social question. In a remarkable passage, however, Sunstein suggests that Proposition 209 may not deserve to be considered democratic at all. "Political processes in California on this issue did not appear to be deliberative," he writes. The "American system is one of representative rather than direct democracy, partly because of a judgment that political deliberation can be best promoted through a representative system. If judicial decisions stimulate poorly functioning referenda processes, little will be gained."

Indeed, Sunstein goes so far as to suggest that the Court might have been justified in striking down Proposition 209 as unconstitutional when it was asked to do so: "It would have been an intriguing irony if the Court, committed to a minimalist path with respect to affirmative action, chose to strike down a referendum in part with the knowledge that it contained a ban that prevented the kind of careful analysis of particulars that has stood behind the Court's own decisions." But surely the point of minimalism is to allow citizens to converge around what they consider to be a deep principle of justice that removes some subjects from the judicial realm once and for all. Sunstein then backtracks, noting that "we can understand" the Court's refusal to hear a constitutional challenge to the California initiative on the grounds that "the judiciary ought not to disrupt ongoing processes of political debate over the status of affirmative action."

Sunstein's notion that Proposition 209 may not have been sufficiently "deliberative" calls his broader commitment to "deliberative democracy" into question. He offers no evidence about the character

Phocýlides of Míletus

Phocýlides said this also: Please
Come back to bed, Love.
I didn't mean to blab
On & on, to bring into the bedroom those wormy

Epigrams. The wise men
& senators parley my wit,
But you pierced the masquerade
Without batting an eyelash.

Doubletalk owns my tongue
Of sass & silver. I wanted
the ripest figs on the trees,
The sweet burden & curse,

But didn't know how to beg.
I couldn't stop running a gold thread
Beneath desire's blind stitch. No wonder,
Aphrodite, you aren't a woman anymore.

Yusef Komunyakaa

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of the debate over Proposition 209, except to note casually that "in the context of affirmative action in particular, there is a danger that referendum outcomes will not be based on a careful assessment of facts and values, but instead on crude 'we-they' thinking." In fact, the debate over Proposition 209, like all political debates, was a messy combination of high principle and low politics: it contained appeals to clashing principles (its sponsors, two college professors, are earnest proponents of the view that the Constitution should be color-blind), factual predictions that turned out to be overly optimistic (affirmative action opponents didn't anticipate the political pressures to lower standards for all students across the board), as well as some crude racial appeals. But this is what real debates in real democracies look like.

SUNSTEIN ALSO PRESENTS no evidence to support his claim that representative democracy is more likely to promote cool deliberation on the affirmative action question than the initiative process is. President Clinton's public statements in the wake of the Supreme Court's decision in *Adarand* v. *Pena* have been characterized by obfuscation rather than by an honest effort to confront the hard choices that the Court demanded, and Congress has proven similarly unable to sustain a reasoned debate on the subject. By blithely dismissing the product of the one popular debate that the country has produced on affirmative action as insufficiently deliberative, Sunstein reveals his commitment not so much to an actual process of democratic debate as to a disembodied ideal of "deliberation" that seems untethered to political discourse as it is actually practiced in any popular or representative body in the United States.

This is an occupational hazard in some strands of the Civic Republican school of constitutional interpretation, for which Sunstein has shown sympathy in the past, but it poses a serious threat to Sunstein's arguments for judicial minimalism. Without a clear, neutral, and intelligible way of distinguishing genuinely "deliberative" democratic debates from those that don't deserve to be called democratic, Sunstein risks substituting his own visions of good policy for those of the people. And that is precisely what minimalism promised to avoid.

The note on which Sunstein concludes his book seems exactly right. "I am speaking of a presumption, or perhaps of a mood, and not of a rule," he writes, indirectly evoking Learned Hand's famous definition of the spirit of liberty. "This is especially important for judges who are not too sure they are right." Adjudication in a pluralistic society, he suggests, calls for "a presumption in favor of theoretical modesty, especially when courts are asked to invalidate legislation." Sunstein's even-handed tone is exemplary in this regard; and if the Court followed Sunstein's model, with scrupulous acknowledgment of opposing arguments and of intellectual complexities, its opinions might be more convincing.

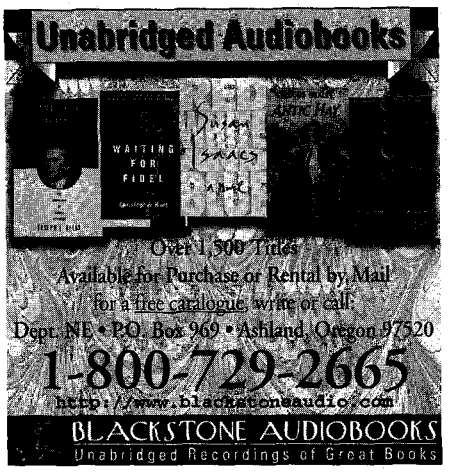
Still, Sunstein's indulgence of the Court's aversion to theory, and even to sophisticated legal argument, is based on a surprisingly dim view of the capacities of political or judicial actors to engage in a dialogue about controversial issues. He insists on deliberation in the abstract, but he has little faith in courts, legislatures, or the people themselves to persuade each other through reasoned debate. His tolerance of thinly reasoned, over-simplified judicial opinions is also hard to reconcile with the vision of democracy that he insists minimalist decisions are designed to serve. Democracy, he writes,

> embodies a commitment to ... reason-giving in the public domain. For the deliberative democrat, political outcomes cannot be supported by self-interest or force. 'Naked preferences,' in the form of legislation supported by power but not reasons, are forbidden. Existing judgments and desires must be made to survive a process of reflection and debate; they are not to be taken as sacrosanct or automatically translated into law.

But how can we demand from the justices of the Supreme Court an even lower standard of deliberation, reflection, reason-giving, and intellectual accountability than we demand from the citizens of the United States?

V.

IF THE IMPEACHMENT of Bill Clinton accomplished anything, surely it should have disabused constitutional theorists of the Panglosssian ideal of democratic deliberation in America as a sober, cool, ratiocinative exercise in achieving consensus through reason-giving. In this diverse and truculent country, there are fierce and irreconcilable differences of opinion about the moral and political and cultural battles that culminated in the Clinton impeachment. To imagine that these philosophical disagreements can be overcome by earnest legislators and citizens persuading each other through reasoned argument will strike anyone who lived through the past year as fanciful; and it betrays an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abstracted idealization of the process of politics over the substance of politics.

Indeed, if there was any poetic justice in the impeachment, it was to display the shallowness of the Clintonian ideal of "the national conversation" as a cure for all political ills. At the same time, the president's acquittal reminded us of the rough wisdom of a Constitution founded on popular sovereignty: for more than a year, public opinion about Clinton's transgressions showed far more nuance and maturity than the partisanship and the sanctimony that dominated public debate in the media, in Congress, in the White House, and even in the courts. An unsentimental assessment of the limits of political deliberation, in other words, is not an argument against American constitutionalism. It is an argument *for* American constitutionalism. There are some conversations that are pointless to prolong. At some point, everybody has to shut up and vote.

THE EVENTS OF the past year also reminded us of the constitutional costs of encouraging Supreme Court justices to reduce themselves to plumbers and tinkerers. The legal forces that culminated in the Clinton impeachment—in particular, the erosion of privacy law, embodied in Fourth and Fifth Amendment protections for individual control over personal information; and the expansion of sexual harassment law, to a point where people can be interrogated about the details of their consensual relationships on the flimsiest of allegations—are the product of surprisingly recent decisions by the Supreme Court. They took place during the three decades from the beginning of the 1970s to the end of the 1990s, when the justices, stung by allegations of activism during the Warren years, began to shun the grand style, and to write minimalist opinions that handed down results without bothering to justify them with coherent reasons. As a result, fundamental constitutional protections were diluted or even abandoned more out of carelessness than constitutional principle. It was during the '70s and '80s, for example, that the axiom that private diaries could not be subpoenaed as mere evidence in civil or white-collar criminal cases—the paradigmatic example of an unreasonable search and seizure for the framers of the Fourth Amendment—was allowed to wither away without anyone acknowledging its slow demise.

Just a few weeks ago, the Court handed down the latest of its sexual harassment decisions, *Davis* v. *Monroe County Board of Education*. In a 5-4 opinion written by Justice O'Connor, the minimalist-in-chief, the Court held that sexual interactions among elementary school students can be a form of actionable gender discrimination, and that schools may be liable for the sexual advances of their fifth-grade charges whenever they act with "deliberate indifference" to harassment that is "so severe, pervasive and objectively offensive that it effectively bars the victim's access to an educational opportunity." Although characteristically shallow, O'Connor's opinion is hardly narrow: it represents judicial legislation of the most sweeping kind, and it threatens to entangle schools and universities in litigation, as they face the risk of liability for disciplining unruly students, or for failing to discipline them.

In a powerful dissenting opinion joined by Justices Rehnquist, Scalia, and Thomas, the three villains of Sunstein's book, Justice Kennedy pointed out the profound analytical difficulties with viewing sexual horseplay among elementary school students, who can hardly be expected to act like adults, as a form of sex discrimination; and he also noted the serious First Amendment threats that may arise as elementary schools and universities feel overpowering pressure to adopt speech codes in order to avoid liability. But the protests of the dissenters rang a little hollow. For the difficulties that they noted are an inevitable consequence of the Court's decision to treat sexual attraction as a form of gender discrimination more than a decade ago, in a series of shallow unanimous opinions, joined by the conservative as well as the liberal justices.

Even more than *Roe* v. *Wade*, the Court's sexual harassment decisions have precipitated a profound shift in social norms; but although scholars and litigants have been begging the Court to confront the analytical difficulties of the revolution that it set in motion for more than a decade, the Court is only now beginning to acknowledge that its social experiment may be spinning out of control. If this is minimalism, the Court might have saved us all a lot of trouble by thinking through the consequences of its decisions before it was too late to turn back.

In an effort to avoid the grand style of Warrenism, the Rehnquist Court has swung so far in the other direction that legal scholars today are feeling a little like the man drinking at the bar on the *Titanic*. ("I asked for ice," he says, "but this is ridiculous.") What has been lost is the basic ingredient of principled decision-making, which is a commitment to judicial reason-giving. The problem with the most notoriously maximalist decisions of the Warren and Burger Courts—*Roe* is the paradigm case—was not that they were philosophically ambitious, it was that they were overly simplistic and thinly reasoned. And the minimalist decisions of the Rehnquist Court suffer from precisely the same flaw. Thus we have the spectacle of a Court exercising great power without offering publicly accountable reasons, which seems hard to reconcile with the vision of democracy that minimalism was designed to promote.

IN JUDICIAL OPINIONS, as in democracy, there are different ways of achieving consensus. One is to offer as few reasons as possible, so no one can possibly feel slighted. Another is to offer as many reasons as possible, none of which is dispositive, but each of which, like strands in a rope, bind together to strengthen the whole. A minimalist who took seriously the judicial duty of reason-giving might recognize that there are, in this pluralistic age, a range of plausible interpretive methodologies, and that judicial intervention seems most legitimate when it can be justified along as many different axes as possible. The conventional tools of legal interpretation—text, history, precedent, tradition, constitutional structure, and moral argument—often point in very different directions. A minimalist judge who took seriously her responsibility to persuade citizens of "diverse theoretical commitments," as Sunstein puts it, might be inclined to defer in the face of contestability, and to strike down laws only in those rare cases when the different methodological tools all point in the same direction. By giving more reasons, rather than fewer reasons, a decision to invalidate could be justified in ways that judges and citizens with clashing moral and political and constitutional commitments can accept and understand.

At this unexpected moment of legal consensus, as liberals and conservatives are converging around the ideal of theoretical humility, perhaps it is time to recover some of the faith in judges as reason-givers that we have spent the past forty years trying to overcome. I do not mean faith in the over-confident, democracy-thwarting opinions of the Warren era. I mean faith in the ability of chastened judges to justify their restrained decisions with intelligible, publicly accessible, well-reasoned and at times even deep arguments that provide clear guidance to citizens and legislators. Whether they (or we) like it or not, judges, and certainly justices of the Supreme Court, are, or should be, intellectuals. They exemplify, or they should exemplify, the indissoluble connection between law and reason.

Thanks largely to the transformation of legal culture that the reaction to Warrenism helped to precipitate, the federal bench in general, and the Supreme Court in particular, is now composed of an able

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group of Democrats and Republicans, whose similarities are more notable than their differences, and who agree more than they disagree about what distinguishes good legal arguments from bad ones. It is indeed passive-aggressive for this Court to hoard its enhanced authority by retreating into an elliptical and obscurantist unanimity. The philosophical silence of the Supreme Court is an anti-democratic silence. Have we all been so spooked by the ghost of Warrenism that we have inadvertently revived it in a different form? ■

Slaughterhouse Jive

By CHARLES S. MAIER

The Pity of War by Niall Ferguson

(Basic Books, 563 pp., $30)

The First World War by John Keegan

(Knopf, 475 pp., $35)

THE BRITISH HAVE taken to most of their wars. Slow learners who are sometimes handicapped at first by their own dismissive prejudices about the enemy, they usually recoup their losses in the decisive final periods, in part because of stolid battlefield virtues, in part because they know how to sustain coalitions. And they write about their wars very well, whether as memoir, poetry, novel, or history. World War I remains perhaps the preeminent object of this continual memory work. Not without reason: it cost the British about three-quarters of a million dead, twice the toll of World War II.

For Europe as a whole, it was the seminal catastrophe of the twentieth century, interrupting the accumulation of wealth, the cosmopolitan interchange, and the gradual if irregular progress of liberalism during the previous hundred years. Had they avoided World War I (and World War II), Western societies would probably be at the same stage of development that they actually are today—largely democratic with a socially integrated white working class, shorn of colonies, partially united, modern and postmodern in sensibility, and still preoccupied with communal violence in the Balkans (or Ulster)—but without having had to suffer the century's intervening ideological orgies, its economic wastage of inflation and depression, its totalitarian experiments, its rap sheet of mass murder.

In a provocative interrogation of traditional views, Niall Ferguson argues that none of these interim self-inflicted catastrophes was necessary. Hence his title, borrowed from one of those affecting lyrics with which literate British youth came to terms with their massive slaughter. The real pity of the war was its avoidability. And it was not merely avoidable, according to Ferguson; Britain, he maintains, should never have entered the war even after it started on the continent. Had Britain remained neutral, the Germans could have forced a negotiated settlement, if not an outright victory; and this would have been followed, or so he speculates, by a benevolent unification of the continent. This is the most contentious assertion in a book that seems to advance one after another.

Ferguson also endorses the findings of recent investigations that have renewed all aspects of the history of World War I: the analyses of origins informed by the methods of political science, the rethinking of actual combat influenced by John Keegan, the proliferating fashionable studies of commemoration, literature, and living conditions, these latter often based on pioneering work done by social investigators of the time and then buried in the superb monographs published by the Carnegie Endowment. Ferguson has organized his reassessment not chronologically but thematically, around irreverent answers to self-imposed questions. Was war inevitable? Did Britain have to fight? Which side fought more efficiently in terms of manpower and financial outlay? His brio is reminiscent of A.J.P. Taylor's combination of unsentimental argument, confident prose, and occasionally self-contradictory conclusions.

START, AS FERGUSON does, with the perennial question of responsibility. He believes that British choices were irrelevant to origins but decisive for outcomes. Like most historians of the last fifty years, Ferguson indicts Berlin's policy-makers for transforming a Balkan conflict into World War I, as the German authorities refused to restrain their Austrian allies from declaring war on Serbia despite mounting evidence that Russia, and thereafter France and probably Great Britain, would feel compelled to respond with force. After half a century of controversy over war guilt, scholarly opinion seems to have settled into a rough consensus on Austrian shortsightedness—though Serb policies in the 1990s may prompt some more sympathy for Vienna's concerns—and German irresponsibility. Most historians do not endorse the primary role that George Kennan assigned to Russian ambition and French encouragement; but many have also backed away from the claims of German scholars of the 1960s, often on the Left, who claimed that their country's military and industrial elites were overwhelmingly responsible owing to their expansionist ambitions.

Was Britain so irrelevant? Woody Allen's Zelig, curiously enough, put the alternative view most succinctly: World War I took place because Britain owned the world and Germany wanted it. This cogent summary accurately captures the anxious supremacy of the maritime hegemon and the wannabe truculence of the continental power. Still, as Ferguson rightly explains, Anglo-German rivalry did not have to end in war. The two powers had many areas of common interest. The Germans were not particularly more militarist than their rivals; most European powers spent roughly the same amount on their armed forces in peacetime—3 to 5 percent of GNP, roughly comparable to what the NATO allies have sustained for almost half a century without war or social upheaval or the "imperial overstretch" that other historians have found economically disabling.

Ferguson's appeal to numbers is admirable, but it is not always convincing. In an age of universal conscription (except in Britain until 1916), ready reserves, and pittances for soldiers, the raising of force levels did not have to take a huge bite out of GNP. Once war was underway, the ratio was different: the major belligerents

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devoted probably 30 to 50 percent of their national income to World War I. (Ferguson's claim of 70 percent seems implausibly high.) The destabilizing effect of an arms race, as he emphasizes, was the conviction of each side that it was becoming more vulnerable and would soon sacrifice any credible defensive capacity. The Germans were obsessed by Russian rail and military modernization, the British and the Russians were preoccupied by German economic and military networking in the Balkans and Near East, the French were taken up with their larger neighbor's manpower and industrial potential. When all sides feel that time is playing against them, every crisis can tempt to preemption, as it certainly did for the Germans. And if this is the case, then the momentum of an arms buildup is not negligible.

THERE IS ROOM to argue about whether the Anglo-German rivalry was really so stable, given the frequency of crises in which both countries had laboriously to patch together some precarious settlement. Still, as Ferguson states, both sides soon understood that the German naval challenge would not strategically alter Britain's maritime supremacy, much as the Soviet Union later understood, at least by the early 1980s, that it could not durably change the missile balance. Mounting Russo-German distrust brought the greater peril of general war. Their mutual fear had to involve France and Austria-Hungary, each incapable of defeating their major foe on their own initiative but able to drag their more powerful ally into a war. In line with recent analysis of strategic dilemmas, Ferguson stresses that the German General Staff accepted the fatal calculus that the crisis triggered by the assassination of Archduke Franz Ferdinand might offer the last occasion on which they could confront the Russians, and perforce their French allies, before the massive Eastern power had overtaken them technologically. Shared dynastic sentiment was not enough to overcome strategic apprehension. As for London's reaction, even those German civilian policy-makers who were despondent about likely British intervention accepted the military's reckoning that British intervention would not make a significant difference before the continental campaign was concluded. In 1917, German policy-makers made the same shortsighted calculation about the Americans.

Ferguson's review of these events is brisk but relatively familiar. Is he correct that Britain could have, and should have, stayed neutral? True, the German invasion of Belgium on August 4, 1914 provided a way to rally an otherwise divided governing Liberal Party. Even had this moral issue not arisen, however, the cabinet would finally have had to seek a nonparty endorsement for war on the basis of the entangling weight of cumulative military agreements with France. Where Ferguson strives for originality is with his cold-blooded calculation that his country's effort was not worth the cost.

Granted, the Kaiser's Germany was not Hitler's Germany; but still it may be doubted that Moltke's victory in 1914 or Ludendorff's victory in 1918 would have assured an easy transition to a benevolent common market. Yet the issue for Britain, and for every belligerent, in the summer of 1914 was not whether the Germans would have rearranged European institutions in a far-sighted or narrowly ambitious manner. It was axiomatic to statesmen that no single nation must dominate the continent. As for the past two centuries or more, the issue was the balance of power.

FOR WILFRED OWEN, "the pity of war" had another sense. It referred to imposed but shared sacrifice. World War I was fought with a pervasive consciousness of iron inevitability. The statesmen who accepted war later said that they could not resist it, whether Foreign Minister Grey ("No human individual could have prevented it") or Chancellor Bethmann Hollweg ("How did it happen? If only I knew ... I didn't want it"), nor could they extricate their countries from it. The young men whom they sent to fight were trapped for years in a narrow combat zone, mourning friends and becoming familiar with the spectacle of violent death that caught up with over nine million of their fraternity. Two years ago, when I visited Ypres, that corner of Belgium held by the British for four years against German attacks, and the site of their own stubbornly sacrificial Passchendaele counter-offensive in the autumn of 1917, visitors were still signing the memorial book at the Church of St. George, paying homage to their grandfathers—as Ferguson does to his grandfather, who survived wounds and gas—visiting the neatly tended mass cemeteries, retrieving memories that they never had directly, and trying to endow a conflict that seems so disproportionately senseless with some redemptive purpose. Ferguson implies that such a purpose cannot be found.

John Keegan endeavors, in effect, to provide the redemption through narrative. His tale is largely familiar, and he tends to compress later developments in favor of the early months, but his tale remains gripping throughout. Ever since *The Face of Battle*, his innovative book of 1976, Keegan has stressed the experience of the individual soldier in the understanding of war, and he does not disappoint here. He provides vivid details of hot uniforms, heavy packs, forced marches and bloody feet, trench digging and artillery fire. As in his earlier book, he stresses how commanders had to move back to what seemed privileged safety behind the vastly extended battle lines. He is also superb at suggesting how technology is always out of joint: it is either obsolete, as in the case of the great Belgian fortifications pounded by the Germans in August 1914, or desperately insufficient, as was flexible wireless communication. Keegan responds to landscape and geography, explaining, for example, why rivers are hard to defend; but he is dead to economics. The reader will find no real discussion of economic or social conditions at home. The material calculus that is so important to Ferguson escapes Keegan's notice: every decision takes place where soldiers confront each other in fields, swamps, mountains, and woods. Still, for those who crave a good tale from the *lacrimae rerum* school of military history, Keegan remains a master.

FOR KEEGAN, the war is an "ultimate mystery." For Ferguson, it is a continuing question. Keegan emphasizes how the war bonded soldiers on the same side into "the closest brotherhood" and "life-and-death blood ties." Ferguson emphasizes how much these comrades enjoyed killing those on the other side. So which Virgil should we trust in this Hell? Rather than stress the psychic distress or the occasional mutinies, which many recent writers have elevated into the normative experience of the conflict, Ferguson justifiably emphasizes the fact that soldiers continued to fight and to endure unbearable conditions for a long time (though most men were exposed to truly awful combat for limited periods). I am not sure that he is correct that they generally craved the "rush" of throwing grenades, twisting bayonets, and taking revenge, as such occasional berserkers as Siegfried Sassoon, Julian Grenfell, and Ernst Jünger testify. And I am skeptical that they were responding to a Freudian death instinct, as Ferguson suggests in an uncharacteristic collapse of empiricism, rather than just succumbing to the trivialization of life. His collation of narratives that record the deliberate killing of prisoners is impressive; but so, too, is the fact that a massive nine million POWs did manage to surrender and to make it into their wretched pens.

For all of us who have never fought in war, it remains truly awesome that soldiers could remain targets for so long under such unspeakable conditions—dragging artillery up the craggy peaks of

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the Dolomites, or immured in the soggy mud of France or Flanders, or baking under a desert sun. The British and the French and the German forces kept armies of millions intact and effective with no more than a few hundred men actually shot for cowardice and desertion; and the figures were comparable for the other combatants (though we have only the record of formal trials and not of junior officers enforcing discipline without trials). Even the large-scale French mutinies of April 1917 were quelled with only a few dozen executions. Compare these numbers with those in Hitler's army, which seems to have executed about 20,000 or more of its own soldiers for growing discouraged at their long-range prospects.

FRONTS FINALLY BROKE, whether Russian and Italian or eventually Austrian and German; but until these mass retreats or routs, which signaled the end (save in the case of Italy, which regrouped), the troops remained stolid. Even the polyglot Habsburg army did not crumble until the German bid for an armistice announced that the end was imminent. Men did not think much of the propaganda that they were fed, but they knew that the enemy had been ordered to kill them and they had to fight back. They did not want to seem cowards to their mates, and their junior officers, that most vital link in leadership, suffered proportionally greater losses and proved their mettle. Keegan's book makes this bonding comprehensible.

We know, too, that for all the ghastliness of trench warfare, the improvised network saved lives and provided relative security. The chronology of French casualties month by month demonstrates that by far the greatest losses took place before the trenches were built. The trenches were rat-infested and muddy, and they could be overrun, but they offered day-to-day protection. Far better to be in a trench than ordered over the top, except for those terrible hours or even days when artillery shells found their range and dismembered those caught under the explosions, the hot shards, and the suffocating earth.

Ultimately, as Ferguson explains, there was a fearful rationality about contesting the war on the Western front. Where else could the war have been won? German victory on the Eastern front in late 1917 did not let Germany win the war in the West. It is doubtful that Lloyd George's preferred end runs, any more than Churchill's later "soft underbelly," would have accelerated the end or vastly economized the costs. This does not mean that pointless offensives were required. The logic of attrition, which let Douglas Haig decide to send wave after wave of soldiers to be mowed down at the Somme or, fifteen months later, shot in the muck of Passchendaele, was bloody wastage. Both offensives were planned with the objective of decisive territorial gains, then finally justified by the calculation that they cost the enemy more soldiers.

UNTIL THE HOME society rebelled, however, there would always be more young men. Year by year they would turn eighteen; a famous cartoon from the humorous front newspaper, the "Wipers (Ypres) Times," shows bearded old British soldiers in the trenches saying that the war babies would be arriving soon. Keegan is justifiably bitter with Haig, and with Lloyd George for not resisting his general's meatgrinder logic. The British could have held steady, as the French did after April 1917, and awaited the Americans—to whom Keegan gives higher marks for their early performance than many other historians, and who in any case could, by the summer of 1918, draw on greater experience and fresh masses of men.

Ferguson emphasizes that the balance of economic resources and manpower always favored the Entente. According to the numbers, Germany and Austria-Hungary could not have won. Still, as he recognizes, and as he might have emphasized more, victory in modern war is decided by a political decision. The power that gets discouraged—its domestic front breaking in revolution, its generals panicking, its electorate concluding that the costs are too high—will lose, and it can be the side with the greater resources. Recall only the Vietnam War.

In most modern conflicts before and after World War II, political demoralization has led to the end, though in the case of Germany in World War I it was the generals' funk that precipitated the political collapse at home. A political collapse is no less a defeat than a loss on the battlefield, for (as Clausewitz famously stated) the former remains the stake of combat. Coming to terms, moreover, is often an assertion of rationality, not a stab in the back. Only in World War II did the war end by force before regimes gave way: the German and Japanese populations remained loyal until the end—a particular irony in that only in World War II did civilian populations suffer so directly.

As a historian who debuted with a dissertation on the German inflation and its impact in Hamburg in particular, Ferguson is sophisticated about issues of war finance. He can draw on a great deal of useful revision to demonstrate that the Germans were not so fiscally frivolous during the war as previously believed. The problem of war finance is one of transferring massive purchasing power and economic resources from individuals and firms to the state—that is, increasing military spending from perhaps 4 to 5 percent to about 50 percent of GNP. In World War I, no society financed more than a quarter of this transfer by overt taxation; the rest had to be achieved by borrowing or the indirect levy of inflation on incomes and bank accounts. Following recent scholarship, Ferguson stresses that Britain and Germany had comparable tax yields. The subsequent German hyperinflation was a consequence more of defeat and political upheaval than flawed war financing alone.

Far more problematic, I believe, is Ferguson's argument that Germany was more efficient because the Reich dispatched its foe at less monetary outlay per corpse than its adversaries. It is hardly clear that this particular economy really demonstrates higher performance, since capital was less of a constraint for the Allies. (Americans fought both wars with material largesse, and rightly so.) Indeed, the sums seem to demonstrate primarily that defense was cheaper in dollar terms per man than attack. And unless the cost of taking prisoners is also included, the comparison proves little.

Most unsettlingly, Ferguson asks

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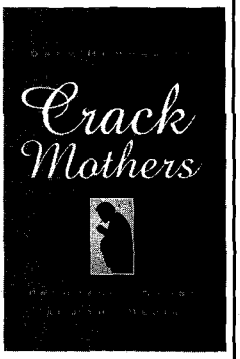

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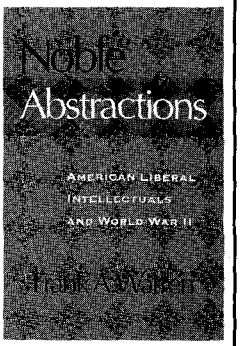

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whether the war effort had any historical sense. Would it not have been better for the Allies to lose? Had Britain not intervened, had there been a stalemate in the West or even a German hegemony, the twentieth century would have avoided the turmoil in Germany that produced Hitler and the disorganization in Russia that entrenched Lenin: no Third Reich, no Auschwitz, no Gulag, no Cold War. One could ask the same question about American intervention: if Wilson had stayed out, might there not have been a negotiated settlement in 1917 that also assured more stability in the long run?

We should not fault the scenario simply because it is counterfactual. Some historians claim that they can explain only what occurred, and not the many outcomes that never materialized. To explain what occurred, however, they must constantly show why plausible alternatives remained excluded; otherwise they write only a teleology of events. Non-existent outcomes should hum about historians' ears like twangling instruments about Caliban's. Still, counterfactual analysis as a historical tool must presuppose the protagonists' limits of knowledge and their sense of logic. If it merely points out ironic outcomes, it remains no more than a parlor game.

Grey, and even Bethmann Hollweg, understood that a major war would endanger what their generation prized as civilization. But even they could not foresee the Third Reich and the Gulag. As of 1914, there was reason to believe that a Germany that dominated Europe by force of arms might behave in the sometimes brutal way that many European states behaved where they did dominate by arms, in their colonial domains. It was not *Dichter und Denker* who would govern Belgium; and it was not operetta composers who so copiously shot Serbian defenders in 1915, any more than contemporary Belgrade intellectuals have sliced the throats of Muslims in the same Bosnian province where World War I was provoked. When societies go to war, their sense of shared humanity shrinks drastically.

On those occasions when I have been in Britain on Armistice Day, I have always bought a red crepe-paper poppy. Making my living, as I do in part, from recalling old veterans' sacrifices in the classroom, it seems the least that I can do. Ferguson deserves to be proud, too, even if his grandfather's tenacious combat may, in some way the old man could never have conceived or intended, have made Hitler's terrible policies more likely. Historians must keep counterfactuals constantly in mind, but as Geoffrey Hawthorn has demonstrated, some counterfactuals are more "warranted" than others. Ferguson's thought-experiments are warranted for reflecting on the irony of unintended consequences, but not to persuade us that the statesmen of 1914 should have acquiesced in German demands.

And yet his provocative and tough-minded analysis renews our thinking about this formative episode of the twentieth century. Another real "pity of war," and the abiding lesson of this stimulating book, is that rational choices can produce absolutely catastrophic outcomes. For that sobering demonstration, I am grateful to Ferguson as well as to his grandfather. ■

CORRESPONDENCE

continued from page 6

like McGinn's and simply found them wanting or misinformed. For example, McGinn's charge that Scanlon's contractualism is part of a futile, "reductionist" attempt to "find a non-moral foundation for morality" rests on a caricature. He asserts that, for Scanlon, wrong actions are simply those anyone could object to. The caricature is so inaccurate and the objection so misguided that one wonders whether McGinn carefully read the book. For Scanlon, an action is wrong if it violates principles that could be reasonably rejected by idealized reasonable individuals who are free, equal, fully informed, and morally motivated to justify their actions to other reasonable persons. The moral concepts built into this definition belie McGinn's claim of a reduction.

"Circularity" is another charge McGinn levels. But the only sense in which Scanlon's contractualist account of morality is "circular" is that it is not a reduction of morality to non-moral concepts. It is an attempt to elucidate certain moral concepts ("right," "wrong," "duty," and so on) by way of other moral concepts. Granted, there is nothing "pithy," "crisp," or "simple" about Scanlon's elucidation. Philosophical elucidations are not for the feebleminded.

McGinn asks rhetorically, "What really is the point of contractualism, unless it is part of such a reductionist program?" Far from this, contractualism seeks to elucidate morality in terms that preserve the objectivity of moral judgments against skepticism. It does so without positing the mysterious existence of an independent realm of moral facts (unlike Platonism), or grounding moral judgments in desires and emotions (unlike Humean accounts), and while preserving morality's normativity (unlike naturalism). No mention is made of these constructivist ambitions in McGinn's review.

The idea that justice is what could be agreed to by free, conscientious moral agents from a position of equal right is central to the liberal and democratic social contract tradition. Scanlon's contractualism seeks to generalize this basic idea, carefully modifying it when appropriate, to account for moral duties generally. It is one of the most important philosophical projects going at the end of this century. McGinn's review has not done it justice.

SAMUEL FREEMAN
Philadelphia, Pennsylvania

COLIN MCGINN REPLIES:

I was very disappointed by Scanlon's book, finding his contractualist analysis of right and wrong objectionably circular, unmotivated, unclear, and neither necessary nor sufficient. I therefore wondered how a book with such flaws could have come to be, and I offered a few speculations. Don Loeb takes exception to these speculations, in turn speculating on my "insecurities." He is perfectly entitled to his speculations—despite their inconsistency with his own attitude toward my speculations—though only *after* he has refuted my arguments, which he makes no attempt to do. The only question is whether the speculations are true, which I leave to the reader to judge. And my point about Scanlon's baroque prose was not that he was being deceptive; it was that, like many philosophers, he was taken in by his own elaborate formulations.

Samuel Freeman objects to my circularity criticism, but he fails to respond to my point about the *grounds* of reasonable rejection, which must be that the action in question was *wrong*. How can we claim to *elucidate* what it means to say that murder is wrong if, in the end, we appeal to the idea that the wrongness of murder is a good reason to object to it? This is no *alternative* to other conceptions of morality, since it presupposes the very moral notions it sets out to explain. Reductionism provides a possible way out of this circularity, but it is totally implausible. Freeman ends by telling us that justice is what conscientious moral agents take it to be, but this is no *analysis* of justice; it is a simple consequence of the tautology that right and wrong are what ideally perspicacious moral agents judge.

Gentle rivals

TO THE EDITORS:

In the almost endlessly extended temper tantrum that is supposed to serve as his review of Yve-Alain Bois's exhibition "Matisse and Picasso: A Gentle Rivalry," Jed Perl produces some wonderfully

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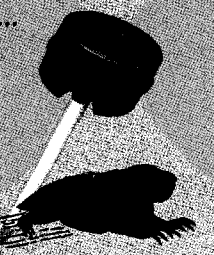

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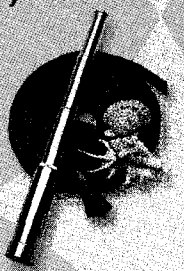

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symptomatic behavior ("What is Modern Art, Anyway?" April 26 & May 3). First there is the foam of near obscenity and name-calling that issues from his mouth. "Crap," as in "Bois has turned two great careers into elegiac crap," is not usually part of the critical lexicon; and "gibberish," as in "Bois is talking gibberish," is just empty invective. Then there is the display of *ressentiment* over the role theoretical models have played in the scholarly assessment of modernist art in the past several decades. This leads not only to sneering references to Bois's "big idea" (we are supposed to hear the "Ho! Ho! Ho!" that follows this), but to slurs such as "high-falutin' theory" and "semantic games."

That such resentment stems from the author's own sense of exclusion is clear from the way this review is constantly generating evidence of the degree to which he doesn't "get it." To return to the matter of influence: The role this has generally played in the traditionally conceived history of style is that apprentice artists are influenced by their masters in the way children are influenced by their parents and teachers. It is their struggle to free themselves from this influence and to find their own individuality that is the usual stuff of art historical accounts. Perl bridles at the idea that what happens in the setting where this early imbibing of a given language takes place is "passive." That it should be so described is what he calls "gibberish." But, if Harold Bloom felt the need to redescribe the standard-issue notion of influence, in a theory that is now 25 years old, this was because of his own determination to make this relational concept accurate by activating it in terms of a violent Oedipal struggle in which the neophyte creatively misreads the master he or she must overcome (or fails to do so). And Bloom was not alone in complicating the traditional view of how artists learn from one another. Mikhail Bakhtin's notion of the intertext is another; René Girard's theory of mimetic rivalry is a third. All of these are important to the way Bois wants, as the extremely fine critic and teacher he is, to direct our attention to certain aspects of a visual text we think we've long since come to know.

Take Picasso's so-called "Marie-Thérèse period." This is the work Picasso made in the early and mid-'30s featuring a voluptuous, somnolent model identified as his young, new mistress. The view that Picasso, now a genius in total control of his art, had nothing any longer to learn from anyone except when he playfully deigned to quote the details and mannerisms from certain old masters has long been paired with the position that Picasso's main source of inspiration for his work had now become the accoutrements of his own life—his lovers and the various aspects of his entourage. Picasso as aesthete and autobiographer, then. That there could be something darker and more compulsive at work is what the marks of "rivalry" betray, a rivalry that emerges as Picasso lifts Matisse's expressive language—the sculptural bust as tumescent organ, the painted odalisque as vegetal profusion—to generate the erotic text he now wants to produce. Two facts lessen the grip of a purely realist (Picasso is directly interpreting his own experience of Marie-Thérèse) reading of these works: Picasso's affair had begun in 1927, five years *before* the onset of the period in question. His newly minted visual language was not formulated until *after* the first major exhibition of Matisse's own relevant works.

Perl can only imagine that exploring this rivalry is undertaken in the interest of a desire to "celebrate purification and disintegration," which is his characterization of theories of either modernism or postmodernism. The narrowness of his own grasp of the theoretical is not only obvious from his problems with the idea of a more complex, more nuanced conception of influence but also from his view that arguments in support of modernism are nothing but pleas for reduction and negation. Bois is himself the author of two path-breaking essays on Matisse ("Matisse and 'Arche-Drawing'" and "The Blinding")—one of them in the book *Painting as Model*, which Perl claims to have read—which not only contain spectacular readings of the late work of Matisse that Perl seems peculiarly unaware of, but in their construction of a disseminatory model for how Matisse's art operates, have nothing whatever to do with reduction.

Perl's resentment of theoretical models has produced the pathology of this review. His own demonstration of their alternative, in a direct, supposedly unmediated connection to works of art themselves, has its own symptomatic side, expressed in the wholly unanalytical, celebratory froth he produces as his object lesson in good criticism. Thus certain Picassos are "wonderful" or "stand-outs"; certain Matisses represent a "metaphysics of hedonism," others are "miraculous," as in the "light-as-a-cloud" Madonna and Child at Vence Chapel.

One would have expected something better and, yes, smarter, from the reviewer for TNR.

ROSALIND KRAUSS
Meyer Schapiro Professor of Modern Art and Theory, Columbia University and Editor, October
New York, New York

TO THE EDITORS:

As a director of an art museum, I write to express my displeasure at Jed Perl's review of the Kimbell Museum's exhibition "Matisse and Picasso: A Gentle Rivalry."

Perl's review pretends to be a critique when really it is a collection of opinions devoid of argument. This is all the more distressing because TNR is a reputable "journal of ideas" on which art museums depend for cogent criticism. I do not need tell you that our nation's journalism strikes a low note when it comes to intelligent analyses of culture. Nor do I need tell you of the financial and political pressures driving our art museums to present more "easily accessible" exhibitions comprising only well-known masterpieces by familiar names. When a museum like the Kimbell undertakes the expense and difficulty of organizing an exhibition around an intelligent thesis of the greatest importance, and is then treated to sloppy journalism, it is disheartening in the extreme.

Perl seems upset that the exhibition's organizer, my colleague Yve-Alain Bois, had an intellectual framework for the exhibition, which he presented in the first few pages of the exhibition catalog. Perl calls this framework "high-falutin' theory" and "art history lite." It is, of course, neither. Anyone who reads the catalog and exhibition labels knows that the exhibition and its accompanying texts derive from the profound insight into the complex relationship of the two most important artists of their day. That their relationship should at times have been competitive, friendly, supportive, and antagonistic should come as no surprise to anyone who knows artists and how they work. Artists work in their studios alone, anxious about how their work will be seen by others, treated in the press, and regarded by their peers. Such anxieties often drive artists to do their best work. And, in the case of Matisse and Picasso, this was true much of the time.

My disappointment with Perl's review of the exhibition is that he de facto discourages museums from pursuing thoughtful exhibitions accompanied by serious catalogs. That the catalog is in fact a book that could exist without the exhibition, as Perl points out, is hardly an issue: the exhibition and book are highly complementary to each other. And that there is no checklist in the book is of no importance: a printed checklist is offered as a handout anyone can pick up, a very common practice now which enables visitors to take away something about an exhibition even if they do not buy the catalog. And that he masquerades name-calling as criticism (he calls Bois's language "gibberish," which it's not; he calls a Picasso a "clinker," which it's not—and does he not mean "clunker"?—and he calls Bois's view of these artists "arid and banal," which it

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most emphatically is not) is a disservice to the contribution the exhibition and catalog make.

It is very difficult for museums today to tackle serious exhibitions of real import. And Perl's review of "Matisse and Picasso" will make it only more difficult. The good news is that hundreds of thousands of happy visitors to the exhibition were treated to a first-rate show and will long recall their good fortune in having had the chance to see, in the handsome and intimate setting of the Kimbell, beautiful and challenging pictures selected to demonstrate an insightful and important thesis. They were lucky indeed.

JAMES CUNO
Elizabeth and
John Moors Cabot Director
Harvard University Art Museums
Cambridge, Massachusetts

JED PERL REPLIES:

Neither Rosalind Krauss nor James Cuno makes it clear how deeply involved they both are with Yve-Alain Bois's work, an involvement which, though it does not disqualify them from coming to his defense, does help to explain the vehemence of their letters. Indeed, Cuno might look a little odd if he did not defend Bois's curatorial talents, considering that the Harvard University Art Museums, of which Cuno is the director, have just presented a show of Ellsworth Kelly's early drawings organized by none other than Bois. As for Krauss, one of her more recent books, *Formless: A User's Guide*, is a collaboration with Bois—the English version of the catalog of a show that they organized together at the Pompidou Center in Paris.

Krauss and Bois are very much comrades-in-arms—she has published him frequently in *October*, and she is one of three people to whom his book *Painting as Model* is dedicated. And at times they do seem to imagine that the entire study of modern art is some kind of seminar room in which they call the shots. Krauss may fancy (this is the import of the two-cent psychologizing of me with which she amuses herself) that I feel a "sense of exclusion" from that seminar room, with its "theoretical models." Well, we have certainly come a long way from Groucho Marx when Krauss cannot believe that anybody would not want to be a member of a club of which she is the chief officer.

Krauss has nothing to say about the substance of what I wrote. What enrages her about my essay is that I do not believe that modern art is in any way, shape, or form described or circumscribed by the models that are approved by Bois, Krauss, and their fellow club members. Bois may imagine that he has come to grips with the later work of Matisse and Picasso, yet he cannot entertain the possibility that these works in which the artists are looking backward and sideways (at their own earlier work, at the work of their contemporaries and near and far ancestors) explode all the progressivist models of art history to which he remains hopelessly captive. Krauss is so closeted and cosseted in that seminar room of hers that she is deaf to one of my main points, which was that it is "the neoclassical spirit writ large—as a declaration that the past is present, that the essentials we strive for are the very ones we left behind—that has carried artists through most of this century." I went on to say that "Mondrian's hostility to neoclassicism was born of a sense that his own Neoplasticism was a competing version of the same idea that in discovering the future you uncover the past."

I argued that Bois's chess-game metaphor denies us access to the artist as an individual; Krauss has nothing to say. I suggested that Bois is setting up a coarse and reductive interpretation of influence when he links influence to passivity, and Krauss merely sets up the same straw man so she can knock it down again (in the names of Bloom! Girard! Bakhtin!). She prattles on about some idea of influence as passivity which she vaguely describes as "the traditionally conceived history of style," "the usual stuff of art historical accounts," and relates to a sort of Emily Post view of how children are influenced by their parents. I was arguing that none of this has anything to do with influence as we see it operating in the work of an artist such as Matisse. Neither passivity nor rivalry has anything to do with what Matisse was doing when, very late in life, he did copies after works by Mantegna and Rubens.

And nothing that Krauss says about Picasso is in response to my article. Far from saying that Picasso (or Matisse) at some point "had nothing any longer to learn from anyone," I argued that Bois has a disturbingly limited view of the influences that are operating in their works. For example, I pointed out that, rather than Picasso's deriving saturated colors from Matisse, both artists were probably reacting in their different ways to Van Gogh and Gauguin. Bois and Krauss approve of a kind of borrowing or stealing that they see as "dark" and "compulsive," but their interpretations of the evidence are pat. Yes, Picasso responded to Matisse's sculpture, but does Krauss's notion that Picasso created what she calls an "erotic text" mean that Matisse saw "the sculptural bust as tumescent organ"? When Matisse and Picasso are hung side by side, what more often than not strikes me is the difference in their intentions, their means, and their ends. The obsession that Krauss and Bois have with turning visual things into verbal things (as in Picasso's "erotic text") is at the core of their grievously wrongheaded approach. They violate, again and again, the first principle of all good thinking and writing about the visual arts, which is to begin with the evidence of the eye, no matter how difficult that evidence may be to gather, to describe, to agree about, or to interpret.

Krauss and Cuno share a basic agenda. They want to make sure that anybody who raises serious doubts about the goings-on in their club is dismissed as a writer of "wholly unanalytical, celebratory froth" and "opinions devoid of argument." (Cuno's version of the we-noble-academics approach includes explaining that he is writing to express his "displeasure" at my review—that's what kings say to courtiers.) According to Cuno, critics should just cheer on museum people—a strange idea of intellectual discourse. What Krauss, Bois, and company really can't deal with is a considered viewpoint that is different from theirs. What I wrote about Yve-Alain Bois is grounded in my own consideration of the later work of School of Paris artists, a consideration that spans some 20 years and is reflected in many of my essays and in my book, *Paris Without End* (North Point Press, 1988), which includes a chapter called "Matisse and Picasso: At the Shores of the Mediterranean."

As for Krauss's comments about the "critical lexicon," I think that many readers of her own prose will agree with me that what she calls critical thought is little more than impressionistic thinking encrusted with lots of buzzwords. I am sorry that she is offended by written language that has a relationship with spoken language. Good writers have used that connection for hundreds and hundreds of years. (Cuno's question about the word "clinker" could have been answered by looking in the standard dictionaries.) As for my saying that Bois has turned the careers of two great artists into "elegiac crap," I don't believe that I have ever used the word before in print, but this seemed a time when it was appropriate. It's curious, in any event, that that word bothers Krauss so much. She and Bois may not use such words descriptively, but in their prim academic way they sure do seem to like art that deals with crap. Readers of Bois's "Base Materialism" section of *Formless*, the book on which Krauss and he collaborated, may recall his interest in a sculpture by Lucio Fontana that he described as "a mess of blackened matter—gleaming and iridescent, with an agitated surface—which seems to have fallen there on the ground like a massive turd."

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WASHINGTON DIARIST

Dog Days

I'M NOT QUITE SURE WHY I MADE THE decision, but at some point over the winter I resolved to get a dog. If I were forced to answer why—and my shrink has expended a good deal of effort to pry this information out of me—I suppose it would be in part because I spend a lot of time each day in my apartment looking at a computer screen and because a writer's life can get lonely from time to time. Boyfriends, I have come to believe, are overrated. There were other offered incentives. My mother, for one, charmingly opined that she thought a dog might make me less selfish. An array of dog books (my favorite: *Smarter Than You Think*) promised moral enlightenment at the behest of my four-legged acquisition. My friends, on the other hand, warned me darkly of new and onerous responsibilities. "You have to feed it, you know," one helpfully informed me. The media—from *The New York Times*' coverage of Rudy Giuliani's new leash laws to a recent cover story on an anti-dog backlash in *The Washington Post Magazine*—told me that the days of social prestige associated with dog ownership were long since gone. And the usual worries of the single male—Who takes care of it when I'm gone? Do I still get to sleep in till noon?—predominated. Nevertheless, I went ahead and got one. A beagle. I was completely unprepared for what followed.

TO SAY THAT A SMALL, BROWN, BLURRY object at the end of a leash transformed my social standing would be an overstatement. But only just. A mere few months ago, I was a happy misanthrope, biking over what pass for streets in the District of Columbia, nodding to the odd acquaintance, and generally staying at arm's length from the rest of the world. I am now besieged. Waves of distant "awww"s crest past me on sidewalks. Twentysomething women virtually faint with broody pleasure as I trot my five-month-old around the block. Local Latino kids strike up conversations with me in the park. I know the names of the three young boys who have lived next door for years but, until now, only regarded me with suspicion and disdain. My local convenience-store owner checks my pup's ears for ticks. Once-aloof, handsome bachelors stoop to mingle on street corners. My fellow condo owners stop to chat in the morning as I stumble, pre-caffeinated, blue plastic *New York Times* wrapper in hand, toward the small, lukewarm turdlet that has just been deposited outside our front door.

IS THIS, I WONDER, WHAT IT'S LIKE TO GET married? One day, you're just another schmo; the next, half the known universe gathers excitedly around to give you a collective, approving "yes!" Until you have reached these lofty heights of social approval, it is hard to explain exactly how they feel, but I can tell you it's a little heady when you get to them for the first time. Strangers gurgle; neighbors smile; old friends nod sagely; relatives ask about your private life for the first time in living memory. Finally I understand why for years I reviled dog owners. They belonged, I suspected, to a smug cabal whose canine accessories made them a privileged class. Now I realize I was completely right. My dog can grab someone's hemline and be greeted with an indulgent grin. She can poop on someone's begonias and be waved away with a smile. She can terrify an infant and have the parent burst out laughing. Even better, her owner is accorded a kind of beatific status as the patient bearer of such canine exuberance. We understand, the strangers seem to say. She's just a dog, and you are such a mensch for owning her. Who knew?

I LOVED THE RECENT *NEW YORKER* CARtoon which features a social x-ray Manhattanite leaning anxiously toward her interior designer. "Of course we can do spare and minimalist," the designer says, "but not on your budget." I am a less-is-more fellow myself and am regularly asked by visitors when I'm going to move into my sparsely furnished Washington loft (I've lived here eight years). But I recently bought a small beach-shack on Cape Cod that has allowed me to fully vent my passion for having as little as possible. I'm moving into the newly renovated space this week. It has 215 or so square feet, and now it also has no kitchen, no bedroom, and no bathroom—merely a futon, a toilet bowl, a showerhead, a modem, and sanded wooden floors. It's the last unit on a small wharf that juts out into Cape Cod Bay in the east end of Provincetown. Beyond it is nothing but sand, tide, a breakwater, and fish. To remove this room's formerly quaint New England interior has cost me a small fortune, of course, but it's worth it for the extremely fashionable emptiness it has opened up. Better still, I'm moving in before construction is finished (it's 98 degrees in Washington already) so there'll be even less to enjoy.

REMINISCING IN MY UNPADDED BEACHcell, I will surely realize that the 1980s were a difficult time for me. I have no problem with capitalism. I've just never been interested in acquisition. What the German Greens call *Konsumterrorismus* has always gotten in the way. So the wealth culture of the end of the century, with its determined understatement, is far more congenial. You need more money, of course. But the good news is you get far less for it. You buy stocks, not property; you sell them online, not through a broker; your address takes up one line with an @ in it. Coffee beats cocaine; Old Navy beats Gucci. New Beetles and iMacs and Tevas and Specializeds provide one-click convenience in cars, computers, sandals, and mountain bikes. Fresh Fields and FUBU mark the stylistic contours of the inner city. I used to loathe shopping. Now I buy five pairs of Gap khakis and ten pairs of cotton socks online. Even the latest HIV drug comes in a small, white, round pill, which you take once a day. It's from a drug company called, appropriately enough, Gilead. And it goes perfectly with my scrubbed wooden floors.

ONE OF THE BENEFITS OF READING REview copies of books is that, every now and again, you catch an author saying what he really means to say. My favorite recently is Dick Morris's new tome, *The New Prince: Machiavelli Updated for the Twenty-First Century*. It's a compendium of the Clinton huckster's dirty campaign and governing tricks, some of which, in the aesthetic of our day, are dressed up to look clean. Readers of the finished version from St. Martin's Press will come across Chapter 41, reassuringly titled "Racism Doesn't Work." Readers of the galley proofs will read the far more enticing title, "Racism Doesn't Work Any More." "Americans," he tells us, "are turned off by racism." Turned off? Oh well. Never mind. "You can't win an election on race anymore in America," he adds, hastily appending, "Thank the Lord." Try as he might, Morris can't quite make us forget his own role in the history of race as a "wedge issue." The man who worked for that friend of white supremacists, Trent Lott, and who once bragged, according to George Stephanopoulos's admittedly hostile memoir, that he had been behind the famous "white hands" ad for Jesse Helms, now poses as the pol celebrating the end of racist vote-grabbing. With a little help, of course, from a spin-conscious copy editor.

ANDREW SULLIVAN

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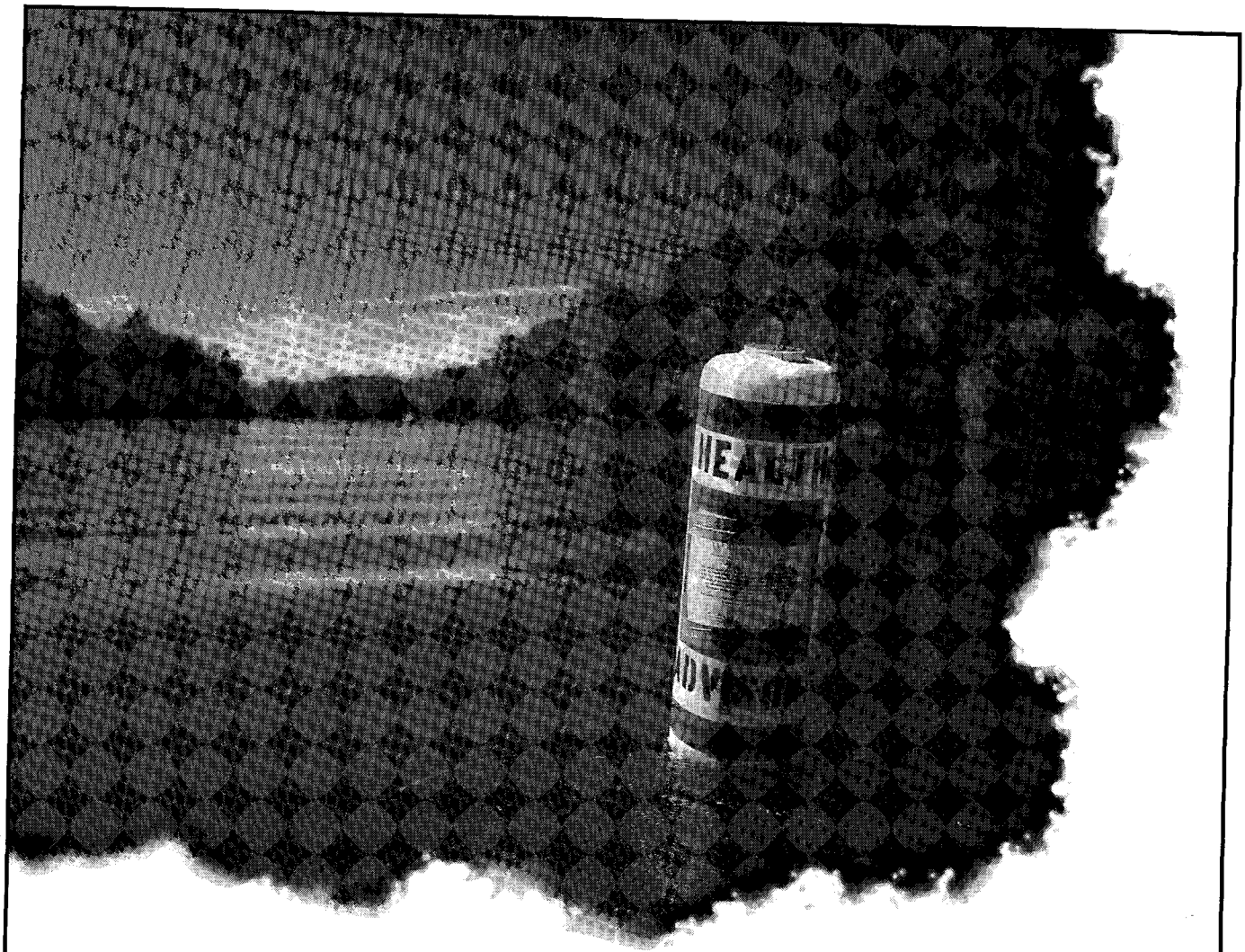

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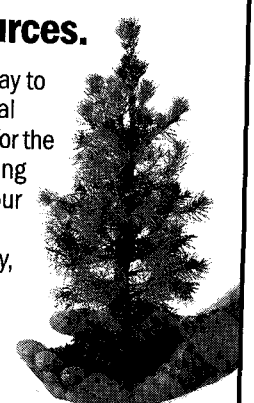

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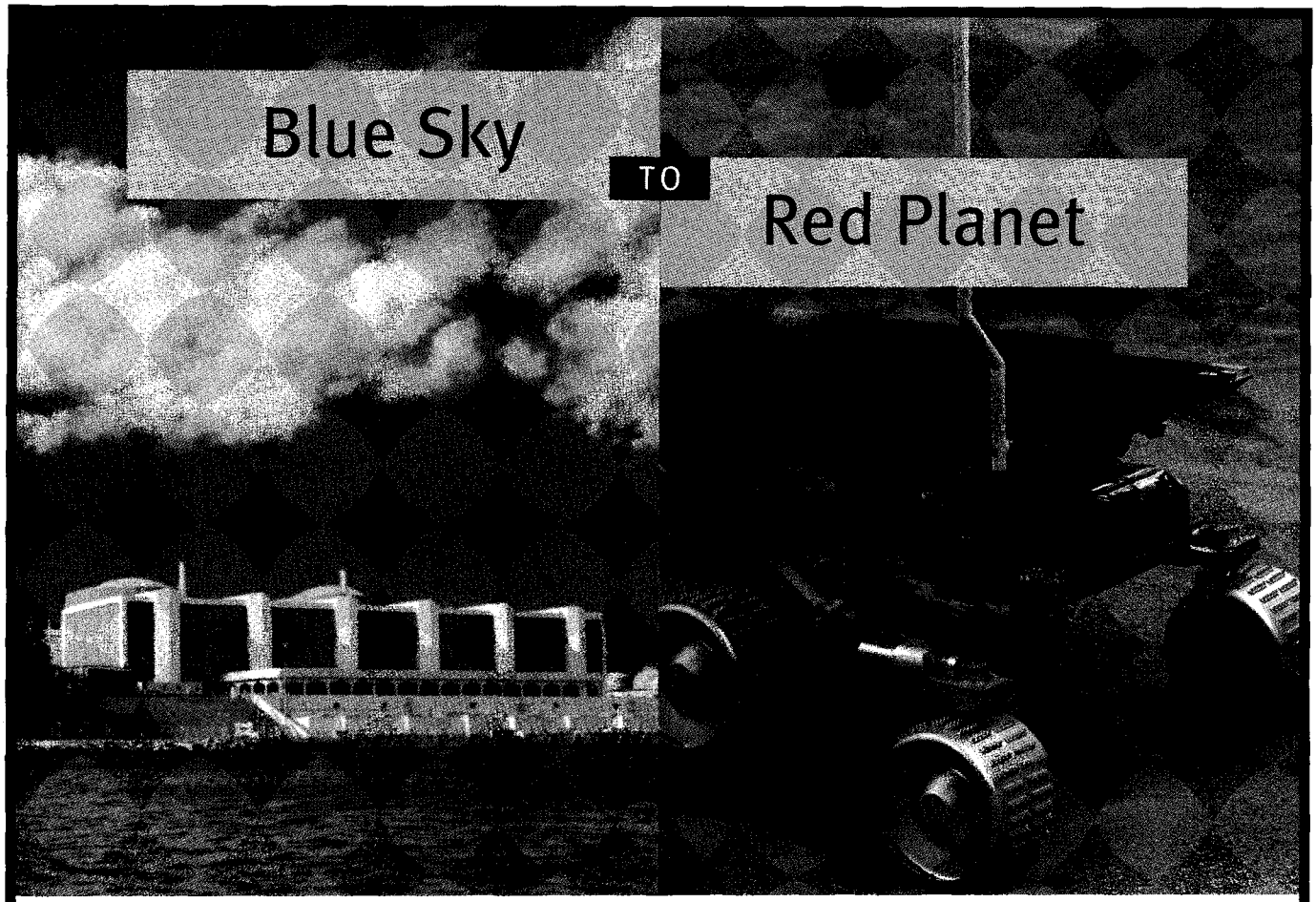

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